

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1118

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 77-1118

Bp/s

UNITED STATES OF AMERICA,

Appellee,

v.

ANNE LAMONT,

Defendant-Appellant.

On Appeal from the United
States District Court for
the Southern District of
New York

APPENDIX FOR DEFENDANT-APPELLANT



DOUGLAS F. EATON
LAWRENCE S. BADER
NEAL J. HURWITZ

Of Counsel

SEGAL & HUNDLEY
Attorneys for
Defendant-Appellant
745 Fifth Avenue
New York, New York 10022

PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE PALMIERI
~~JUDGE~~

74 CR 762

D. C. Form No. 100 Rev.

TITLE OF CASE

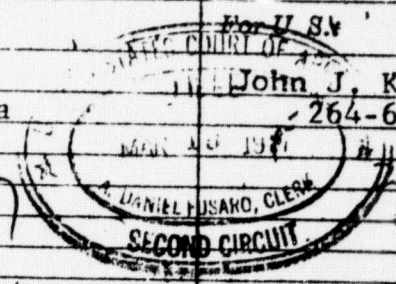
THE UNITED STATES

ATTORNEYS

VS.

ANNE LAMONT, a/k/a Anne Stepanek, a/k/a
Anna Pavilinea

John J. Kenney, AUSA,
264-6425



g/h

8-20-76 Filed superseding indictment. Case referred
to Judge Griesa for all purposes.

For Defendant:

-1195

18:1343 Wire fraud. Cts. 1-4
18:2314 Travel fraud. Ct. 5

9-23-76 Filed superseding indictment.

18:1343 Wire fraud. 1-4, 5&7
18:2314 Travel fraud 5

(05) STATISTICAL RECORD		COSTS	18:1341 Mail fraud.	DATE	NAME OR RECEIPT NO.	REC.	DATE
J.S. 2 mailed		Clerk					
J.S. 3 mailed		Marshal					
Violation		Docket fee					
Title 18							
Sec. 2314							
Causing traveling to defraud.							
(One Count)							

DATE	PROCEEDINGS
7-31-74	Filed indictment and ordered sealed. B/W ordered. Stewart, J.
2-4-75	Indictment ordered unsealed. Frankel, J.
2-18-75	No appearance. Court directs entry of not guilty plea. Motions ret. in 10 days. Case assigned to Judge Griesa for all purposes. B/W ordered & issued. Tenney, J.

7-24-75
Closed statistically because
(X) defendant) is
() co-defendant) a
() witness) fugitive
In all other respects this case
is still pending.

PROCEEDINGS

- Deft. not present Bail Fixed at \$100,000 cash or surety.....BRIEANT.
- 7-76 Deft. & atty. present..Pleads not guilty..Bail set at \$20,000 cash or surety to be met by 4 P.M. June 10, 1976. Bail conditions extended to the Southern Dist. of Fla. & Deft to report to U.S. ATTY. office once a week.....F & P 10 days for motion..Trial Sept. 13, 1976....Griesa, J....
- 6-11-76 Filed Appearance Bond in the sum of \$20,000.00
- 7-14-76 Filed Warrant for Arrest Dated 2-18-75 with return -received-6-9-76 & ex. Memo Endorsed on back of Warrant-.....\$20,000 Cash or surety bond. So Ordered.GRIESA, Dated 6-9-76.
- 8-20-76 Filed indictment. Superseding 74 Cr. 762. Purs. to Speedy Trial Act case is to retain same number and referred to Judge Griesa.
- 8-28-76 Deft. (and atty. Martin Siegal present). Enters a N/G plea. Case assigned to Judge Griesa.. 10 days for motions. Bail cont'd as fixed \$ 20,000 Cash or surety.. WRKER, J.
- 8-27-76 Filed notice of appearance by Marvin B. Segal, Segal & Hundley, 745 Fifth Ave. (Suite 1909)- New York, N.Y. 10022 tel: 753-7800
- 9-13-76 FILED MATERIAL WITNESS appeance bond for JOHN BARRY in amt. of \$5,000..
- 9-14-76 Trial adjd to Sept. 29-76 10 a.m.....Griesa, J.
- 9-15-76 Filed UNSIGNED order for the return of cash bail...to JOHN BARRY material witness with an endorsement thereon....
- 9-20-76 Filed papers recvd from Magistrate...Docket sheet, warrant to apprehend material witness. Appearance bond in amt. of \$100,000 secured by \$5,000 cash....
- 9-23-76 Filed superseding indictment. Referred to Judge Griesa as related 74 Cr 762. Purs. to the Speedy Trial Act superseding indictments or information shall retain original number.
- 9-28-76 Filed notice of readiness for trial....
- 10-21-76 Filed Deft's Notice of Motion for an order for Bill of Particulars pursu to Rule 7(f) FRCP.
- 10-22-76 Filed memo endorsed on motion filed Oct. 21, 1976...Motion granted in accordance with understanding of counsel*****Palmieri, J.....m/n
- 10-26-76 Filed 1 manila envelope ordered sealed and placed in clerks vault....Palmieri, J.
- 11-19-76 Filed Deft's Order to show causa for an order why S.F. Gordon should not with the judicial subpoena duces tecum served on him 10-29-76, or be held in contempt.RET: 11-18-76 4:00 P.M. PALMIERI, J
- 11-19-76 Filed transcript of record of proceedings, dated Sept. 13, 1976
- 11-19-76 Filed transcript of record of proceedings, dated Sept. 14, 1976

PROCEEDINGS

Filed transcript of record of proceedings, dated Oct. 7, 1976

12-76 Filed Deft's Proposed examination of prospective jurors :2

11-22-76 Deft. & atty. present (Marvin Segal) PLEADS NOT GUILTY to the indictment... JURY TRIAL BEGUN...

11-23-76 Trial cont'd.

11-24-76 Trial cont'd.

11-26-76 Trial cont'd.

11-29-76 Trial cont'd.

11-30-76 Trial cont'd.

12-1-76 Trial cont'd.

12-2-76 Trial cont'd.

12-3-76 Trial cont'd.

12-6-76 Trial cont'd. Govts Rests

12-7-76 Trial cont'd.

12-8-76 Trial cont'd. Both sides rest

12-9-76 Trial cont'd. Jury charge

12-10-76 Trial cont'd. and concluded... Deft. found GUILTY in Cts. 1, 2, 3, 4, 6, 7, 8... COUNT 5 is declared a MISTRIAL... Bail increased to \$50,000 cash or surety to be posted by Dec. 14, 1976 \$10,000 to be signed by deft personally... Deft must report twice a week to P.O. Inspector in Florida... Deft to submit a financial statement to Probation Office. Date of sentence 2-4-76 at 11 a.m... P.S.I. ordered...
Palmieri, J.

12-13-76 Filed surety bond in amt. of \$20,000 by Midland Ins. Co. dtd. 12-13-76

12-13-76 Filed appearance bond in amt. of \$10,000....

11-19-76 FILED TRANSCRIPT in matter of JOHN BARRY dated 9-10-76.....

12-17-76 Filed transcript of record of proceedings dated: 6-9-76.

12-28-76 Filed transcript of record of proceedings dated: 11-22, 23, 24, 26-76

12-28-76 Filed transcript of record of proceedings dated: 11-29, 30-76; 12-1, 2-76

12-28-76 Filed transcript of record of proceedings dated: 12-3, 6, 7, 8-76

12-28-76 Filed transcript of record of proceedings dated: 12-9, 10-76

1-26-77 Filed Govts sentencing memorandum.....

2-4-77 Filed Judgment# 77,265)deft is committed for imprisonment for a period of THREE(3) YEARS on each of cts. 1, 2, 3, 4, 6, 7 & 8 to run concurrent with each other. Deft is to pay costs of prosecution, pursuant to Ti. 28, U.S. Code, Sec. 1918. Deft to pay committed fines of \$1,000 on each of counts 1, 2, 3, 4, 6, 7 & 8. Total fines of \$7,000.. Bail pending appeal... Deft to report to Probation Dept. in Florida once a week in person, and to telephone Probation Dept. in Florida or New York once a week..
Palmieri, J. Ent. 2-7-77-----

Issued commitment and copies.....

CONTINUED ON PAGE 4.

762...

Palmieri, J.

4a

74 CR 762

PROCEEDINGS

PALMIERI, J

07-77

Filed NOTICE OF APPEAL of debt to USCA 2nd Circuit from Judgment
filed 2-4-77 mailed copy to Marvin B. Segal of Segal & Hundley
745 Fifth Ave. NYC 10022, atty for debt and U.S. Attorney.

2-4-77

Filed unsecured bond pending appeal in amt. of \$25,000 dated 2-4-77...

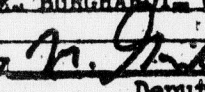
2-4-77

Filed surety bond in amt. of \$75,000 by Midland Ins. Co. pending appeal...

A TRUE COPY

RAYMOND E. BURGHART, Clerk

By



Deputy Clerk

D

12-28-10

United States of America vs.

United States District Court for

the SOUTHERN DISTRICT OF NEW YORK

DEFENDANT

ANNE LAMONT, a/k/a
ANNE STEPANEK, a/k/a ANNA PAVLINEC,
a/k/a ANNE TASHJIAN

DOCKET NO. 8-74 Cr. 762(ELP)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government **Steven Schatz, AUSA**
the defendant appeared in person on this date

MONTH DAY YEAR
2 4 77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Marvin Segal, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly having devised and intending to devise the scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce certain writings, signs, signals, pictures and sounds; and did place and caused to be placed in post office and authorized depository for mail matter. (Title 18, U.S. Code, Secs. 1343, 1341 and 2.)

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or suggested to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **THREE (3) YEARS** on each of counts 1,2,3,4,6,7 & 8 to run concurrent with each other. Defendant to pay costs of prosecution, pursuant to Title 28, U.S. Code, Sec. 1918. Defendant to pay committed fines of \$1,000.00 on each of counts 1,2,3,4,6,7 & 8. Total fine of \$7,000.00.

-Bail pending appeal-

Defendant to report to Probation Department in Florida once a week in person, and to telephone Probation Department in Florida or New York once a week.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set forth on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation at any time during the probation period or within a maximum probation period of five years permitted by law, may have a hearing on probation for a violation occurring during the probation period.

COMMITMENT OR PROBATION

The court orders commitment to the custody of the Attorney General and recommends.

SIGNED BY

☒ U.S. DISTRICT JUDGE

☐ U.S. MARSHAL

CERTIFIED AS A TRUE COPY ON

THIS DATE 1-4-77

16

15
62
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

ANNE LAMONT, a/k/a
Anne Stepanek,
a/k/a Anna Pavlinec,
a/k/a Anne Tashjian,

Defendant.

INDICTMENT

S 74 Cr. 162

COUNTS ONE THROUGH EIGHT

INTRODUCTION

The Grand Jury charges:

1. From in and around January, 1972, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ANNE LAMONT, a/k/a Anne Stepanek, a/k/a Anna Pavlinec, a/k/a Anne Tashjian, ("LAMONT"), the defendant, and others to the Grand Jury known and unknown, unlawfully, wilfully, and knowingly did devise and intend to devise schemes and artifices to defraud, and to obtain money and property from victims, such as John Barry ("Barry") (Counts One through Five) and William Johnson ("Johnson"), NAVSAT Systems, Inc. ("Navsat"), and First National Bank of South Charleston, South Charleston, West Virginia ("West Virginia Bank") (Counts Six through Eight).

2. It was part and pattern of said schemes and artifices to defraud that defendant LAMONT would and did represent herself to be an experienced financier who had successfully promoted and completed a large number of transactions.

3. It was further part and pattern of said scheme and artifices to defraud that defendant LAMONT would and did obtain false, misleading and exaggerated letters of recommendation from a representative of the United Nations. Defendant LAMONT would and did then show the aforesaid letters, knowing their contents to be false, misleading and exaggerated, to prospective victims, such as Barry, in order to establish credibility with the prospective victims.

4. It was further a part and pattern of said scheme and artifice to defraud Barry that:

a) The defendant LAMONT would and did falsely and fraudulently represent to Barry that she was ready, willing and able to secure monies in the approximate amount of \$2,000,000 for his benefit and for the benefit of Studio Center Ltd., a corporation in which Barry was a principal.

b) The defendant LAMONT would and did exploit the representative's position at the United Nations by stating to Barry, among other things, that the representative would be on the Board of Directors of Studio Center, Ltd. and that United Nations business could be given to Studio Center, Ltd.

c) In and around March, 1973, defendant LAMONT would and did falsely and fraudulently represent to Barry that \$2,000,000 was then available in Switzerland to be loaned to Barry and to Studio Center, Ltd.

d) In and around the middle of March, 1973, defendant LAMONT, would and did fraudulently induce Barry to pay \$50,000, upon the false and fraudulent representation that \$50,000 was needed by defendant LAMONT to secure the \$2,000,000 loan and that \$10,000 was needed for expenses money by defendant LAMONT to insure that the loan was

properly handled.

8a

e) The defendant LAMONT would not and did not use the \$60,000 received from Barry as reimbursement to Barry. Rather she would and did spend the money primarily on her personal needs and on distributions among her friends and acquaintances. In fact, defendant LAMONT had no honest expectation that Barry and Studio Center Ltd. would receive all or any part of the \$2,000,000 which Barry had been told was available.

f) When victims such as Barry made demands for delivery of the promised financing, defendant LAMONT would and did attempt to lull them into a false sense of security by various assurances that the promised financing was forthcoming and by false representations that there had been unavoidable and unforeseeable delays attributable to other persons.

g) At no time did defendant LAMONT deliver the promised financial assistance to victims of the scheme and that the great bulk of the advanced monies were never returned. In fact, neither Barry nor Studio Center, Ltd., would or did receive all or any part of the \$2,000,000 which defendant LAMONT had represented was available, nor did defendant LAMONT return any of the \$60,000 advanced to her by Barry.

5. It was a further part and pattern of the scheme to defraud Johnson, Navast and the West Virginia bank that:

a) The defendant LAMONT would and did falsely and fraudulently represent to Johnson that in exchange for a commission she was ready, willing and able to secure monies for Johnson, for his benefit and the benefit of Navast Securities, Inc., a corporation in

which Johnson was a principal

9a

b) The defendant LAMONT obtained from Johnson approximately 200,000 shares of Navsat, certificate numbers 894 and 895, pursuant to an agreement that she would obtain financing beneficial to defendant LAMONT and Johnson.

c) On or about June 2, 1972, the defendant LAMONT pledged approximately 200,000 shares of Navsat, certificate numbers 894 and 895, with the West Virginia Bank by depositing them at the Manufacturers Hanover Trust Company in the Southern District of New York in exchange for a loan of approximately \$200,000.

d) The defendant LAMONT never would and never did give Johnson, and Johnson never would and never did receive any of the proceeds of said \$200,000 loan from the West Virginia Bank. In fact, the defendant LAMONT had no honest expectation that Johnson or Navsat would receive any of the proceeds of said loan. Rather, defendant LAMONT lulled them into a false sense of security by various assurances that the promised monies would be forthcoming.

e) The defendant LAMONT never would and never did repay the \$200,000 loan to the West Virginia Bank and the West Virginia Bank never would and never did receive payment of said loan. In fact, defendant LAMONT had no honest expectation that said loan ever would be repaid. Rather, defendant LAMONT lulled said bank into a false sense of security by various promises that she would repay the loan.

COUNTS ONE THROUGH FIVE

f. On or about the dates set forth in Count One through Four, set forth below, in the Southern District of New York, defendant LAMONT, unlawfully, wilfully and knowingly, having devised and intending to devise the

scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, set forth hereinabove in paragraphs 1 through 4 of the Introduction, the allegations of which are incorporated herein by reference, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce certain writings, signs, signals, pictures and sounds, as set forth below, for the purpose of executing such scheme and artifice:

<u>COUNT</u>	<u>APPROXIMATE DATE</u>	<u>MATTER IN INTERSTATE AND FOREIGN COMMERCE</u>
1	March 12, 1973	Phone call by John Barry in New York, New York to Bank of Montreal, Toronto Canada, concerning obtaining the \$60,000 requested by Lamont.
2	March 13, 1973	Phone call between John Barry in New York, New York, and Bank of Montreal, Toronto, Canada concerning the \$60,000 transaction.
3	March 13, 1973	Phone call between Bank of Montreal, New York, New York, and Bank of Montreal, Toronto, Canada.
4	March 13, 1973	Wire communication from Bank of Montreal, Toronto, Canada, to Bank of Montreal, New York, New York, confirming earlier telephone conversation.

(Exhibit 18. United States Code, Sections 1343 and 2.)

COUNT FIVE

11a

The Grand Jury further charges:

7. On or about March 12, 1973, in the Southern District of New York, defendant LAMONT, unlawfully, wilfully and knowingly having devised and intending to devise the scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, set forth hereinabove in paragraphs 1 through 4 of the Introduction, the allegations of which are incorporated herein by reference, did cause one John Barry to travel in interstate commerce, between Toronto, Canada, and New York, New York, in the execution of said scheme and artifice to defraud said John Barry of money and property having a value of more than \$5,000.

(Title 18, United States Code, Sections 2314 and 2.)

COUNTS SIX AND SEVEN

The Grand Jury further charges:

8. On or about the dates set forth in Counts Six and Seven, set forth below, in the Southern District of New York, defendant LAMONT, unlawfully, wilfully and knowingly, having devised and intending to devise the scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, set forth hereinabove in paragraphs 1 through 3 and 5 of the Introduction, the allegations of which are incorporated herein by reference, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce certain writings, signs, signals, pictures and sounds, as set forth below, for the purpose of executing such scheme and artifice:

<u>COUNT.</u>	<u>APPROXIMATE DATE</u>	<u>MATTER IN INTERSTATE AND FOREIGN COMMERCE</u>
6	May 3 rd 1972	Phone call between West Virginia Bank, South Charleston, West Virginia, and Manufacturers Hanover Trust Co., New York, New York.
7	May 21, 1972	Wire communication from West Virginia Bank, South Charleston, West Virginia to Manufacturers Hanover Trust Co., New York, New York, confirming earlier telephone conversation.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT EIGHT

The Grand Jury further charges:

9. On or about June 2, 1972 in the Southern District of New York, defendant LANCET, unlawfully, wilfully and knowingly, having devised and intending to devise the schemes and artifices to be set forth in paragraphs 1 through 3 and 5 of the Indictment, the allegations of which are incorporated herein, did place and caused to be placed in a post office and authorized depository for mail matter and did cause to be received from the Postal Service, and knowingly did cause to be delivered by mail according to the direction thereon a letter notification sent and delivered by the Postal Service from Manufacturers Hanover Trust Co. New York, New York, to the West Virginia Bank, South Charleston, West Virginia, that Securities of Navsat Systems, Inc., certificate numbers 895, 894, were placed in safekeeping that were received against receipt.

(Title 18, United States Code, Sections 1341 and 2.)

JOHN F. FLYNN, JR.

JOHN F. FLYNN, JR.
United States Attorney

1 that under the rules their arrests should not be admitted.

2 So what I would -- in light of your Honor's ruling, I
3 will discuss it with Mr. Segal.

4 If we can reach accord, fine. If not, I will
5 raise it with the Court at the appropriate time.

6 THE COURT: Mr. Segal sent me this letter and
7 sent you a copy of it. I would ask the clerk to mark this
8 as a Court's Exhibit, Court's Exhibit 1.

9 He refers to an in camera ex parte application
10 made by the Government on October 22nd. He wants to know
11 the basis for this extraordinary application, whether
12 the application is justified; that measures be undertaken
13 to preserve both the application and his two requests
14 for possible appellate review.

15 Obviously, the last request will be complied
16 with. I have directed that all the papers be sealed and
17 preserved for any eventual scrutiny by this Court or by
18 the Court of Appeals, if necessary, but what have you to
19 say with respect to the preliminary requests?
20

21 MR. SCHATZ: The very reason which the Government
22 submits justifies an ex parte submission militates very
23 heavily in merely apprising counsel that such an ex parte
24 submission has been made.

25 The Government is not likely -- does not usually

1 seek ex parte rulings, but the rules authorize it in certain
2 instances, and under these circumstances, where certainly
3 the safety of an individual or individuals may be involved,
4 I think that that is appropriate.
5

6 THE COURT: You oppose any disclosure. I
7 have frankly been through so much since this application
8 was made that I have forgotten a lot of the detail.

9 I will review the papers and refresh my recollection
10 and if I come to any conclusion which might warrant dis-
11 closure, I will discuss it with both counsel.

12 I want to say preliminarily, and purely as a
13 superficial comment, that I dislike keeping any counsel
14 in the dark about anything, and unless they are very
15 persuasive as to reasons why I should do this, I will not
16 do it.

17 However, as of right now the matter is considered
18 to be confidential. It will be preserved under seal for
19 eventual scrutiny by the courts.

20 MR. SEGAL: I have just a comment. I'm not
21 quite sure just how much of each of the voir dire that
22 has been submitted by both sides your Honor is going to
23 incorporate.

24 THE COURT: Some I will use and some I won't.
25 I don't want to take the time. The panel is out there.

1 gwa

2 UNITED STATES OF AMERICA

3 vs.

4 ANNE LAMONT

5

6

New York, November 23, 1976,

7

10:30 a.m.

8

Trial resumed.

9

--

10

(In open court; jury present.)

11

J O H N G. S T O E S S I N G E R resumed.

12

THE COURT: Proceed, please.

13

DIRECT EXAMINATION CONTINUED

14

BY MR. SIFFERT:

15

Q Dr. Stoessinger, yesterday you testified

16

with respect to a plea to a misprision of felony and

17

an agreement. I would like to show you Government's

18

Exhibits 38 and 39 and ask you whether you can

19

identify them.

20

A These are the agreements.

21

Q Exhibit No. 39, is that the information

22

which charges the misprision of felony?

23

A Yes, it is.

24

MR. SIFFERT: The government would

25

offer 38 and 39.

1 gwa

Stoessinger-direct

135 16a

2 MR. SEGAL: I would object to these docu-
3 ments. I don't know why the indictment or an agree-
4 ment with the government has to become part of the
5 evidence.

6 THE COURT: Overruled. I will explain
7 the reasons in private.

8 (Government's Exhibits 38 and 39 were re-
9 ceived in evidence.)

xx 10 MR. SEGAL: I will state for the record
11 that the documents are self-serving documents on behalf
12 of the government and should at least be limited in their
13 acceptance by the jury.

14 THE COURT: They are not self-serving.
15 They clarify an issue which is before this jury regard-
16 ing both the motivation and credibility of this witness
17 and I would appreciate it if you would refrain from
18 further discussion about the admissibility of these
19 documents until I can confer with you privately.

20 MR. SEGAL: May the government be
21 inhibited from reading these documents to the jury
22 until such time?

23 THE COURT: No, I will allow the reading
24 or the not reading of the documents within the dis-
25 cretion of the prosecutor. They will be made avail-

Univerity which was based on Anne Lamont's promises in effect.

"Q Are Anne Lamont's promises set forth in that budget?

"A No."

Did you give those answers to those questions?

A Yes, I did, Mr. Segal.

MR. SEGAL: I have no further questions, your Honor.

REDIRECT EXAMINATION

BY MR. SIFFERT:

Q When you were saying that Anne Lamont's promises were not set forth in that budget, what did you mean?

MR. SEGAL: Objection.

THE COURT: Overruled.

A I merely meant that I didn't mention her name in it, it was not relevant at that point. It was a projection based on roughly half a million dollars which I submitted at that time. I didn't see any relevance to mention names. I would have mentioned the name, of course, if the contribution had in fact materialized.

MR. SIFFERT: No further questions.

BY THE COURT:

Q Dr. Stoessinger, I regret keeping you on the

stand a little longer after this lengthy testimony but there are one or two matters I would like to clear up for the benefit of the jury.

You mentioned giving your Phi Beta Kappa key to the defendant at one point. Some of these jurors are not college graduates and perhaps have never gone to college.

Would you explain what a Phi Beta Kappa key is?

A A Phi Beta Kappa key is a key that one gets in collect in one's senior year for academic excellence.

Q And it is considered to be a price of some distinction, is that right?

A At an undergraduate level.

Q And one of the privileges connected with that price is the right to wear the key, is that right?

A Yes, it is, your honor. I gave it to her as a token of love.

Q What are your present feelings towards the defendant? You have referred to her almost continuously as Anne, which I suppose is the way you have always addressed her. What are your present feelings towards her?

A I am glad you asked me that. I would like to answer that question, Mr. Segal.

MR. SEGAL: Your Honor, may I object to the

2 question.

3 THE COURT: What is the basis for your
4 objection? You spent a lot of time going into issues
5 of credibility and motivation and it seems to me
6 that this question is directly relevant to that.

7 THE WITNESS: Yes, it is.

8 THE COURT: I am delighted you agree, but you
9 are only a witness.

10 MR. SEGAL: His present feelings I believe are
11 of no moment. He has feelings of his own that are more
12 germane than his feelings with Anne Lamont and I
13 think if that is the question of credibility --

14 MR. SIFFERT: Mr. Segal can argue that to the
15 jury, your Honor.

16

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THE COURT: I don't wish to hear argument.

It seems to me a perfectly relevant question with

request to the present feelings of a witness with

respect to a defendant about whom he has been testify-

ing for nearly two days.

You may answer the question. I overrule

the objection.

A I am sorry that I am very emotional about

it. I have had a question in my own mind for two

years to which I have no answer --

THE COURT: Would you like to have a

short recess?

THE WITNESS: No, I wouldn't. I will

manage it, your Honor. The honest answer is that

I have been in agony over that for two years --

MR. SEGAL: Your Honor, I object to this.

This is not an answer to the court's question.

He is talking about his own feelings and those are

the only feelings he has ever talked about.

THE COURT: What feelings can he talk

about?

MR. SEGAL: His feelings about Miss

Lamont. His feelings about himself are the feelings

he is talking about.

1 rma2

Stoessinger-

2 THE COURT: Your interruption is entirely
3 uncalled for and I ask you to please take your seat.

4 THE WITNESS: Thank you, your Honor.

5 BY THE COURT:

6 Q Please continue.

7 A I am frankly puzzled and my feelings are
8 extremely mixed. On the one hand, my heart tells
9 me, your Honor, that she loved me and that she loaned
10 me those funds because she really wanted to make good
11 on that book project. My mind tells me, however,
12 that perhaps she tried to leverage my connection-at
13 the United Nations in order to make profits for her-
14 self --

15 MR. SEGAL: Your Honor, I object to this.
16 I don't know that --

17 Q I think you have answered the question
18 sufficiently and any further explanation might
19 involve us in statements that are improper.

20 Is it fair to say that you are not testify-
21 ing in this case out of any sense of resentment?

22 A Not at all.

23 Q Is it fair to say you are not testifying
24 in this case because of a feeling of animosity towards
25 the defendant?

1 rma3

Stoessinger-

2

A Not at all. I don't hate her. I am

3

just confused. I don't understand it.

4

Q I have just one or two more questions,

5

doctor --

6

A I don't know even why I am here.

7

Q How many university degrees do you have?

8

A Three.

9

Q What are they?

10

A I have a bachelor's degree from Grinnell,

11

I have a master's degree from Harvard and I have a

12

doctorate from Harvard.

13

Q How long were you associated with the

14

United Nations as a paid member of its Secretariat?

15

A Seven years, your Honor.

16

Q Between what years?

17

A Between 1967 and 1974.

18

THE COURT: That is all I have.

19

MR. SEGAL: Your Honor, I at this point

20

would ask permission to introduce another document.

21

Since the whole question of his feelings came out,

22

which I avoided --

23

THE COURT: You have not avoided it at

24

all. You brought out inscriptions in those books;

25

how can you say you avoided it?

gwal4

Rubel-

here the rest of the week discussing the basis for his conclusion. It is his discussion in the community. You have brought up something that would affect her reputation. It is he who evaluates it in the light of all the other facts. I decline to permit you to offer it.

The way that is stated and the verbiage in that paper could be construed in a grossly prejudicial manner to this defendant and only somebody who is familiar with the financial community is in a position to weigh its significance. This witness is thoroughly competent to weigh its significance and thoroughly competent to decide the extent to which it should be given any weight.

I will not allow it to be offered into evidence.

Mr. Rubel, you are excused. There are no further questions. Thank you.

(Witness excused.)

THE COURT: May we get into the Barry matter which you wanted to cover?

MR. SCHATZ: Certainly, your Honor. I think it should be taken at the side bar.

THE COURT: We have to go into the

1 gwal5
2 robing room.

3 (In the robing room.)

4 THE COURT: What is the problem?

5 MR. SCHATZ: Your Honor, included in the
6 material that we have handed over to Mr. Segal is
7 material pertaining to the arrest of Mr. Barry as a
8 material witness. He was not arrested for any crime
9 and we would submit that it has no probative value
10 whatsoever and Mr. Siegel should not be permitted to
11 into it.

12 THE COURT: I wouldn't allow him to into
13 it. We have already discussed this. That
14 record is not a conviction record at all and in the
15 light of the fact that there was no prosecution of this
16 gentleman, no arrest of this gentleman in connection
17 with his detention as a material witness, I don't think
18 it has any possible pertinence in this case and I
19 instruct you to avoid any questions on that subject.

20 MR. SEGAL: Your Honor, what he is talking
21 about is the fact that at one point Mr. Barry was leaving
22 this jurisdiction. The United States Attorney's
23 office had him taken off of an airplane. I don't
24 know whether or not there was a legitimate charge against
25 him or not, but then he was brought back here and

1 gwal6

2 brought before Judge Griesa and he was put in \$150,000
3 bail. Now, that has got to have some bearing as
4 to whether or not that man is testifying here voluntarily
5 or not, whether or not he has been under pressure or
6 coercion by the government. I believe that is a
7 legitimate area of inquiry.

8 THE COURT: What date did that occur?

9 MR. SEGAL: Just before the case was
10 to start.

11 MR. SIFFERT: September of this year.

12 THE COURT: You mean two months ago?

13 MR. SEGAL: Yes.

14 THE COURT: How do you explain that?
15 Why was he placed under \$150,000 bail before Judge
16 Griesa? Judge Griesa was the judge in charge of this
17 case until it was assigned to me very recently.

18 MR. SCHATZ: The facts are set forth in
19 the material I presented to Mr. Segal as follows:
20 Mr. Barry was down in my office. He was there.
21 He did not -- he left my office without any warning.
22 We tried to contact him at his hotel and we could not
23 find him. We next found out that he was on a plane
24 to Canada. In order to preserve the jurisdiction
25 of the court, since Mr. Barry is a Canadian citizen,

1 gwa

2 we asked for and got a warrant for his arrest as a
3 material witness.

4 Mr. Barry explains that --

5 MR. SIFFERT: Let's finish that. That
6 was before Judge Haight, who upon being advised that
7 he was arrested set \$150,000 --

8 MR. SCHATZ: 100,000.

9 MR. SIFFERT: At that point he was
10 brought back before Judge Griesa and it was reduced
11 at that point.

12 MR. SCHATZ: It was reduced at that point.

13 Mr. Barry explains that he had the flu,
14 though he was in the room and heard the phone ringing
15 he did not take any calls, could the government decide
16 to reduce the bail.

17 The only reason we took that extraordinary
18 act was Mr. Barry was a Canadian citizen and we
19 wanted to preserve our jurisdiction over Mr. Barry.

20 THE COURT: Did he leave for Canada under
21 bail?

22 MR. SCHATZ: He has been voluntarily re-
23 turning. I don't see the pertinence of a line
24 of inquiry as a prior bad act. It is not a bad act
25 on his part. It certainly creates no motive for him

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603 27a

2 to help the government.

3 THE COURT: Is he under bail now?

4 MR. SCHATZ: No.

5 THE COURT: When was the bail lifted?

6 MR. SCHATZ: About two or three weeks
7 ago. It was voluntarily reduced at that time.

8 Mr. Barry then indicated that he felt no need for the
9 bail and at that point --

10 MR. SIFFERT: May I correct the record?
11 As I recall the circumstances, the conference before
12 Judge Griesa resulted in total withdrawal of all bail
13 but that there were certain conditions to the re-
14 duction of bail to nothing. Those conditions were
15 that Mr. Barry and his attorney would work out with Mr.
16 Schatz a schedule of appearances so that there
17 could be discussions with the United States Attorney's
18 office. What happened two or three weeks ago
19 was the vacation of a bench warrant. That's what
20 happened.

21 MR. SCHATZ: That is in fact correct, your
22 Honor.

23 THE COURT: Are there any typewritten
24 proceedings with respect to this matter?

25 MR. SIFFERT: Yes, your Honor.

1 qwa

2 THE COURT: Would you produce them so I
3 can read them. Then will you go over the matter with
4 Mr. Barry and his attorney, if his attorney is
5 present, or at least with Mr. Barry alone if he is here
6 without an attorney, so that the facts are straight
7 and so that you can correct any facts that may need
8 to be corrected.

9 I will have to reflect upon this, Mr.
10 Segal. I assume that his direct testimony will
11 take at least the rest of the morning session and
12 possibly the beginning of the afternoon, so I will
13 have an opportunity to reflect on it. If I see there
14 is any appropriate basis for bringing it out, I will
15 do it.

16 I didn't realize until now that this was
17 a very recent incident connected with his appearance
18 as a witness in this case. I thought it was some-
19 thing in the remote past having to do with his
20 Canadian peripheral experience.

21 Is there anything else you want to bring
22 up?

23 MR. SCHATZ: Yes, your Honor. Out of
24 an abundance of caution I want to raise with the court
25 and ask for an exclusionary ruling on the follow-

AFTERNOON SESSION2:00 p.m.

(In open court.)

THE COURT: Gentlemen, I thought I should make a ruling before the jury came in. With respect to the subject matter of the minutes which I hold in my hands and about which we conferred in the robing room I will place those under seal for any eventual appellate scrutiny. My ruling is that they are not related to any issue in this case and could not become the subject of fair cross examination with respect to this witness because there is no indication whatever in these minutes that the witness was in any way an unwilling witness, and to explore this matter would open up a Pandora's Box of irrelevancies and problems which I think would enure to the prejudice both of the Government as well as the defendant, and so my ruling is that the incident referred to in these minutes is completely irrelevant to the issues in this case and should not be referred to by either side at any time.

MR. SEGAL: Your Honor, would you want to hear my ground as to why they should be?

THE COURT: Then we would have to go into the robing room. I thought you already gave me your ground

1 dwrf 2

2 when you moved for the right to explore this matter.

3 MR. SEGAL: Your Honor, I didn't move. They
4 wanted a preruling.

5 THE COURT: All right, then let's come in and
6 I will have to hear it again.

7 (In the robing room.)

8 MR. SEGAL: Your Honor, there is another document
9 that was given to me. Have you seen 3503-HHH and 3503-GGG?

10 MR. SIFFERT: GGG has been taken off as a
11 number but that is it.

12 MR. SEGAL: One is a transcript of September
13 13, 1976, and one is a transcript of September 10, 1976.

14 THE COURT: The September 10th was before
15 Judge Haight. The September 13th before Judge Griesa of
16 this court.

17 MR. SEGAL: Your Honor, the basis for my wanting
18 to use this is the fact that I feel that this directly
19 impinges on the voluntariness of this witness' statements,
20 whether or not there is self-interest by this witness
21 in order to relieve himself of the obligation of that,
22 of the alleged flight that he took, of the pressure
23 that was brought by the Government in leveling \$100,000 bail
24 on this man as they indicate was only released or
25 exonerated approximately three weeks ago. It is in this

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area that I feel that at the very eve of when this man is to get on the stand, they are having problems with him as a witness, and then he gets on the stand and he testifies as he is, I feel that this is germane and should be considered by the jury, that the jury should have an opportunity to determine the voluntariness and pressure or lack of such in his role as a witness.

THE COURT: I adhere to the ruling for the reasons I have stated in open court. The statement you have just made was made to me in substance this morning, and it adds nothing to what I already know. In my opinion these minutes show that this man was a voluntary witness. There was a misunderstanding between him and the United States Attorney regarding his presence and continued presence here. He was sick. His excuses were all accepted. He stated to the Court and the Court believed and credited him with a truthful statement when he and his attorney represented to the Court that he was a voluntary witness and continued and was proposed to continue to be a voluntary witness.

For this unfortunate misunderstanding to be now raised as a means of attributing either coercion to the Government or lack of voluntariness on the part of this witness would in my opinion be a gross injustice and tanta-

dwrf 4

mount almost to a fraud on this jury.

So I am going to direct that these minutes
3503-HHH and GGG --

MR. SCHATZ: We will label it 3503-GGG, your Honor.

THE COURT: -- be placed under seal for any eventual
scrutiny by any appellate court and will remain under
seal subject to the further orders of this Court.

MR. SEGAL: Your Honor, this morning --

THE COURT: Actually they don't have to be under
seal because these are not confidential documents.

Excuse me, I withdraw that. I just direct that the United
States Attorney preserve them for any eventual scrutiny
by an appellate court.

MR. SEGAL: Would we be able to mark those as
exhibits? I think we should have some exhibit number.

THE COURT: They have.

MR. SCHATZ: 3503-GGG and 3503-HHH.

MR. SEGAL: Your Honor, this morning Mr.
Schatz I believe said there was some agreement between
himself and the attorney for Mr. Barry about a schedule
of appearances.

Now, I have not seen anything like that.

MR. SCHATZ: It appears in 3503-HHHH, your Honor .
It is in the record.

1 dwrf 5

653 332

2 THE COURT: All right. Call in the jury and
3 explain to them that I had already had a session and that
4 is why we are starting late because I had to make some
5 rulings of law.

6 (In open court, jury present.)

7 J O H N B A R R Y, resumed the stand and
8 testified further as follows:

9 DIRECT EXAMINATION

10 BY MR. SCHATZ (Continued):

11 THE COURT: Please proceed, Mr. Schatz.

12 Q Mr. Barry, prior to the luncheon recess you
13 testified that you were impressed when Miss Lamont showed
14 you Government's Exhibits 1-C and 14. What was your
15 reaction to Miss Lamont's verbal statements concerning
16 Dr. Stoessinger's possible participation --

17 MR. SEGAL: Objection.

18 A -- in Studio Center?

19 MR. SEGAL: His state of mind is unimportant,
20 your Honor.

21 THE COURT: I overrule the objection.

22 Q Mr. Barry, what was your reaction to -- withdrawn.

23 MR. SCHATZ: Could the reporter read back the
24 last pending question?

25 (Record read.)

1 dwrf 14 Barry-direct

2 read for the jury, just to, in your own words, the indictment,
3 so that we have a -- I think the jury is entitled solely
4 to know that the charge is a violation of such a section.

5 • MR. SIFFERT: The Government would have no
6 objection to that.

7 THE COURT: I could read the indictment.

8 MR. SEGAL: No, I don't want the indictment.

9 THE COURT: This whole introduction prefaces
10 practically all of the charges but it is a long intro-
11 duction and then we get to the mail or the travel and the
12 other aspects of it.

13 It is not concisely stated.

14 MR. SCHATZ: What we would suggest is that
15 you essentially summarize the indictment.

16 MR. SEGAL: Your Honor, may that note be marked?

17 THE COURT: The best summary that I can think
18 of that I think would be the least innocuous one is this
19 and that is what I intend to do.

20 All right, mark this note as a Court's Exhibit.

21 MR. SEGAL: Your Honor, you still had that
22 ex parte application that was made by the Government to
23 you. I just don't know whether that ruling may be
24 germane to anything that is happening with this witness
25 or what happened to the last witness. Perhaps we should

1 qwrf 2

2 MR. SEGAL: Yes, your Honor.

3 THE COURT: All right.

4 MR. SEGAL: To hark back for a moment to that
5 sealed item that the Government has given on an ex parte
6 basis to the Court, I don't know what that is. I saw
7 something in 3500 material yesterday in a postal report
8 that was given to me for Mr. Martin, I believe -- no,
9 for the agent, for Slavinsky, and whether inadvertently
10 or not that 3500 material contained a Russian name.
11 I don't know what that had to do with the report.

12 THE COURT: Nothing. It had nothing to do with it.

13 MR. SEGAL: It seems to me that may very well be
14 the item.

15 THE COURT: It is not the item. It has nothing
16 to do with it.

17 MR. SEGAL: The problem is that not knowing what
18 this is I am always afraid --

19 THE COURT: Mr. Segal, all I can do is to express
20 my deep regret, as I have at least twice before, and
21 to assure you that these documents will be preserved
22 for any eventual appellate decision.

23 It is my duty not to reveal their contents
24 at this time and I don't believe they will in any way
25 impinge upon your right to a full, fair trial.

1 rmrf 7

Timothy cross

2 affidavit occurred before or after you backdated the
3 certificates, is that correct?

4 MR. SIFFERT: Asked and answered.

5 A Yes.

6 THE COURT: You didn't say you were not sure,
7 you said you didn't know, wasn't that your answer?

8 THE WITNESS: Yes, your Honor.

9 THE COURT: You see, you have to be careful
10 about these questions. A cross examiner has the right
11 to suggest another answer and you have to be extremely alert
12 to catch the nuances between questions that are different
13 from the answers that you give.

14 THE WITNESS: Thank you, sir.

15 MR. SEGAL: Your Honor --

16 THE COURT: I feel this witness who is here
17 without a lawyer is entitled to be instructed as to his
18 rights.

19 MR. SEGAL: I have no objection to his being
20 instructed as to his rights.

21 THE COURT: I am delighted you don't object.

22 MR. SEGAL: And I am perfectly willing to have him
23 instructed as to his rights, your Honor.

24 THE COURT: I just instructed him.

25 Q On what date were the certificates backdated?

1 qwrff 4

Timothy-cross

2 THE COURT: Tell us how much money you got
3 for the replacement certificates you sold.

4 THE WITNESS: Your Honor, I couldn't tell you
5 that without going to some documentation. I didn't know
6 I needed this documentation. The Internal Revenue
7 has been checking it out for themselves. They haven't
8 got all the information yet. I turned all my records
9 over to them and they are now auditing that very thing.

10 THE COURT: Can you give us an approximately amount
11 or the average sales price at which you sold them?

12 THE WITNESS: The average sales price would have been
13 75 cents a share but I haven't sold all the stock yet.

14 THE COURT: But whatever you sold you think you
15 did sell for 75 cents a share?

16 THE WITNESS: Yes, between 75 cents and a dollar.

17 THE COURT: Between 75 and a dollar?

18 THE WITNESS: Yes.

19 THE COURT: Would that be a fair statement of
20 the financial situation?

21 THE WITNESS: Yes, sir.

22 THE COURT: With respect to the sale of the
23 replacement shares?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right.

1 qwrf 5 Timothy-cross

2 Q When was it that you sold stock to Richard Bell?

3 A I don't know.

4 Q Was it in August of 1972?

5 A I don't remember.

6 Q When did you get the certificate?

7 A That would have been after, I guess, --

8 are you talking about the 200,000 share certificates?

9 I had 306,500 shares. Define what certificates you are
10 asking.

11 Q The replacement shares that we are talking about
12 is 1753 and 1752. Those are the certificates that you
13 were asking to be replaced, is that right?

14 A Yes, 200,000 shares.

15 Q 200,000 shares?

16 A Yes.

17 Q Did you sell out of that 200,000 shares -- first of
18 all, tell me when was it that the replacement certificates
19 were obtained?

20 MR. SIFFERT: Which question does Mr. Segal want
21 answered?

22 THE COURT: Didn't you already say it was
23 shortly after the date of the replacement letter?

24 THE WITNESS: Yes, right after October 18, 1976.

25 Q Isn't it true that by that time, that in August

1 qwr f 6

Timothy-cross

2 of 1972, you had sold shares to Mr. Richard Bell?

3 A I could have, yes, sir. I had shares besides
4 these.

5 MR. SEGAL: May I have a moment, your Honor?

6 (Pause.)

7 Q Did you, on August 17th, sell 500 shares to
8 Robert Nelson?

9 A I could have.

10 Q That was before you got the replacement certificates,
11 isn't that so?

12 THE COURT: Yes.

13 He said he had other shares besides those
14 involved in the replacement certificates.

15 Q Have you made a presentation to the Internal
16 Revenue Service about what happened to shares that were
17 1752 and 1753, yes or no?

18 A They have and are doing an audit of that right now.
19 I haven't presented anything to them.

20 Q I show you Government's Exhibit 3521-B, which is
21 a document composed of a number of pages and is a
22 document that was turned over to defense counsel by the
23 Government pursuant to discovery proceedings.

24 I am going to show you this document. Read it
25 to yourself and then I will ask you some questions about

1 gwrf 7

Timothy-cross

2 whether or not that document refreshes your recollection
3 about whether or not a presentation has been made to
4 the IRS about your stock certificates.

5 MR. SIFFERT: Objection, your Honor. That is not
6 in connection with Mr. Timothy's 3500 material.

7 MR. SEGAL: That makes no difference. Of what
8 matter is that? I can show him anything.

9 THE COURT: Let me see it.

10 (Document handed to Court.)

11 MR. SEGAL: Your Honor, I would like to come to
12 the side bar.

13 THE COURT: Will you do it later? Go on to some-
14 thing else. We have had at least three side bar conferences
15 this afternoon. I am very much concerned about the
16 manner in which this case is progressing or failing to
17 progress, and I would appreciate it if you would try to
18 finish except for this point and I will take it up at the
19 recess.

20 MR. SEGAL: This is at a point in my examination
21 that I need.

22 THE COURT: All right. Step up.

23 You may have a short recess, ladies and
24 gentlemen.

25 (Jury leaves courtroom.)

qwr 8

Timothy-cross

THE COURT: Let me say this: This paper purports to be a report by Snellen Johnson to the United States Attorney in which Snellen Johnson under date of September 27, 1976, almost on the eve of this trial, is reporting what he says is a complete listing of Timothy's stock recently done by an IRS agent.

Now, number one, this was never done by the witness himself. Number two, this was done by an IRS agent. There is absolutely nothing in this paper which even purports to contradict even by the remotest stretch of the imagination what he testified to, and I don't see how you can claim that this can be used to assail this man's credibility when it is nothing more than a document prepared after the event by a stranger to this man.

MR. SEGAL: I am asking him to refresh his recollection. If I may make a record. This document says one of two things. Either it says Snellen Johnson is lying to the Government when he presents what he says -- this is to John Siffert, the Assistant United States Attorney. "I was fortunate in finding a complete listing of Jerry Timothy's stock recently done by an IRS agent."

That is either true or false. Then we have what is supposed to be the preparation that was done by the IRS

qwrff 9

Timothy-cross

agent. That presentation on the second page shows that there is a note here and it says with regard to 827.

No. 827 was split into two certificates of 100,000 each, No. 1752 and 1753, and registered in the name of Anne Lamont. Timothy signed a statement that the transaction with Anne Lamont was never completed. In the interim the stocks were lost or stolen and not returned to Timothy. Timothy requested duplicate sheets issued in his name --

THE COURT: Don't take any more of this down. I am not going to permit you to delay this trial any more by any such statements. This is not in evidence. This was offered to you as a cross examination tool. This is not prepared by the witness. It was prepared by an Internal Revenue agent after the event and furnished to the Government by Johnson in 1976.

Now, there is nothing further that need be said because whether Johnson lied to the United States Attorney is something that you could have probed when you cross examined Johnson. This witness is not competent to testify as to the credibility of Johnson. He is competent to testify as to the credibility of his own statements and his own actions. This is not something he did. Therefore, it cannot refresh his recollection

1 qwrf 10

Timothy-cross

2 about something he did because there is nothing in there
3 that he did.

4 MR. SEGAL: Your Honor, I respectfully disagree.
5 I can show him any document which may have the import,
6 but this document, if I may complete it --

7 THE COURT: Don't read it into the record. It
8 is not in evidence. I am not going to let you put it into
9 the record by any other contrivance.

10 MR. SEGAL: This isn't a contrivance.

11 THE COURT: You will not read that into the
12 record. It is marked for identification and it will be
13 available for any further proceedings before any other
14 court. That document is not being suppressed, but I am
15 not going to let you take more time to clutter this record
16 up with matters which are irrelevant, improper and
17 incompetent.

18 MR. SEGAL: This document shows that he was
19 selling certificates in August that weren't replaced
20 until October. That is what the document says.

21 THE COURT: Are you trying to delay this case,
22 Mr. Segal?

23 MR. SEGAL: No, your Honor. I am trying to get
24 adequate cross examination.

25 THE COURT: I have the very firm impression

1 qwrfl 11

Timothy-cross

2 you are doing everything in your power to delay this case.

3 MR. SEGAL: I am not, your Honor.

4 THE COURT: You go on and on and on. I am not
5 going to permit you to do it. This is not a message from
6 the All Mighty. I don't care what is written on this
7 document. This document could say that this witness murdered
8 somebody. It is not competent, it is not his document,
9 it is not his memorandum, it is the preparation of
10 a third party for whom he is not responsible. He has
11 testified that he has never made a representation to the
12 IRS. He has said it twice.

13 MR. SEGAL: Your Honor, I am refreshing his
14 recollection.

15 THE COURT: About his making a presentation to
16 the IRS?

17 MR. SEGAL: That is correct.

18 THE COURT: You cannot do it by something that
19 somebody else said.

20 MR. SEGAL: Where could the IRS agent have gotten
21 this material but from him.

22 THE COURT: I don't know. Maybe from Johnson.

23 MR. SEGAL: It is a listing of Timothy's stock
24 from Johnson.

25 MR. SIFFERT: Mr. Segal, you have talked for

1 gwrfl 12

Timothy-cross

2 five minutes. There is nothing in this record which
3 requires refreshment of his recollection concerning supplying
4 information to the IRS. Mr. Timothy stated clearly I
5 presented nothing to the IRS, they are doing an audit.
6 There is no need to refresh his recollection.

7 MR. SEGAL: I am entitled to refresh his
8 recollection when I have a document that may show he is not
9 telling the truth.

10 THE COURT: He told you on the stand in the
11 presence of the jury, Mr. Segal, that he turned all his
12 papers over to the IRS, that the IRS is doing an audit on
13 him, and it is quite possible that the IRS knows more about
14 his affairs than he knows himself. That is not an unusual
15 circumstance.

16 So for you to attempt to use an IRS report to
17 a third party whom you could have cross examined but chose
18 not to in an effort to get him to contradict himself is
19 entirely improper and I won't permit it and again, I have
20 the impression that you are using it as a delaying tactic.

21 MR. SEGAL: I am not, your Honor. I think this is
22 legitimate and I can do this legitimately. I am doing it
23 to refresh his recollection. It has been furnished
24 purportedly -- how can an IRS agent have compiled it
25 without talking to the taxpayer.

QWrf 13

Timothy-cross

THE COURT: I told you, by auditing his business records.

MR. SEGAL: May I examine on that?

THE COURT: That is how he could do it. You know it as well as I do.

MR. SEGAL: Then his business records are false?

THE COURT: Not at all.

MR. SEGAL: Because he is selling stock in August that he didn't get until October.

THE COURT: I don't know how long you are practicing law but I am sure not as long as I am. I have been compelled to try cases much longer than you. I can assure you you are mistaken, honestly mistaken when you say this. If this IRS agent had said in a report, "I interviewed Mr. Timothy told me so and so," then obviously that would be something to refresh his recollection because he is putting words right in his mouth and you are getting it from a third party and that would be a legitimate basis for recollection.

But for you to use what Snellen Johnson says in 1976 to the United States Attorney based upon a report of an IRS agent which apparently is based upon an audit of business documents is not going to refresh this man's recollection when he has testified, A, that he turned

qwr 14

Timothy-cross

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2 everything over to the agent and, two, that he can't
3 answer because he doesn't know.

4 MR. SEGAL: Your Honor, I realize that we are
5 both becoming excited. I want to say this to the Court.
6 I am not taking the Court on. I am trying to press
7 what I feel is a legitimate area of examination. I
8 respectfully indicate to the Court that my motives are
9 not toward delay. This is a planned series of questions
10 in an area that I felt are not only germane but could
11 be potentially devastating to the veracity of either this
12 witness or of Snellen Johnson, both of whom are
13 critical to the Government's case and both of whom and
14 whose veracity is to be tested here to the utmost.

15 I will desist, your Honor, because I don't want to
16 provoke the Court and I don't want myself, either of us, to
17 have to say something unfortunate. I will just desist.

18 THE COURT: All right. I have made a ruling
19 in good faith and I can assure you that I am not doing it
20 out of anything except what I consider to be the disciplines
21 that are imposed upon the two of us in the trial of
22 a case. I decline to permit you to use this document
23 as a means of refreshing his recollection in the light
24 of his testimony and in the light of the contents of the
25 document.

1 qwrf 15

Timothy-cross

2 If you were really interested in ferreting
3 out the basis for this list, it seems to me that you should
4 have gone after Johnson.

5 MR. SEGAL: I couldn't have questioned Johnson.
6 There I think there would be a more legitimate basis.
7 I would ask Johnson about Timothy's stock.

8 THE COURT: That is Johnson's own letter.

9 MR. SEGAL: It is a letter transmitting a listing
10 done by an IRS agent. I would be under a severe handicap
11 there.

12 THE COURT: All right. I'm sorry we can't
13 understand each other. I decline to permit you to use it.

14 How much more do you expect to question this man?
15 Have we got an open issue?

16 MR. SIFFERT: One issue about the grand jury.

17 THE COURT: Call him back. I have to ask him about
18 the grand jury.

19 MR. SIFFERT: May we talk to him and ask him?

20 MR. SEGAL: I don't think they ought to
21 talk to him.

22 THE COURT: Maybe it will save time. If he
23 was ever before the grand jury, you are entitled to his
24 grand jury minutes.

25 MR. SEGAL: That's right.

1 gwa

2 is the kind of chart which is not capable of being
3 cross examined, which solidifies the witness' testimony
4 without the benefits of cross examination, and as such I
5 find the chart is one that I must object to.

6 THE COURT: I think your objection is not
7 well taken at all. We have had so many separate
8 and dispersed pieces of paper in this case, stock certi-
9 ficates, checks, dates, everything else, that it would be
10 very difficult for this jury to understand the case
11 unless they were aided by some graphic presentation of
12 this kind.

13 But when you say that you are deprived of
14 cross examination I fail completely to understand it.
15 Every single item on each one of these charts
16 either has been or will be supported by a witness
17 for the government or by a specific exhibit. There is
18 nothing here that constitutes an argument or contention
19 or anything else. It is merely to show the inter-
20 relationships between exhibits and between facts testified
21 to by witnesses who will be available and have been
22 available for cross examination so that the jury can better
23 understand the entire picture.

24 MR. SEGAL: I think both of us have been
25 talking about Exhibit 218. I want to make that

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2 clear.

3 In terms of contentions there is a dotted
4 line which indicates an arrow, an agreement in March
5 of 1971 and January 10th of 1972, which runs from the
6 block Anne Lamont to the block which is Snellen Johnson,
7 Navsat Systems, Inc. That is a contention. That
8 is not supported by a document. It is testimony that
9 is depicted here. There is no exhibit to that effect.
10 In fact -- well, there is an exhibit to the January 10,
11 1972 situation. The March, '71 I don't believe there
12 is.

13 THE COURT: I didn't say that every item
14 was supported by an exhibit. I said that the items
15 were all supported either by exhibits or by testimony of
16 witnesses whom you have been able to cross examine.

17 MR. SIFFERT: With respect to the March,
18 '71 date, Exhibit 411A does refer to that.

19 This is the second chart I was referring
20 to which will be deemed 219, your Honor, and just, for
21 example, the \$50,000 to John Stoessinger, the 54,000
22 to Lamont's account at Franklin National and several
23 of the other numbers are checks drawn on Manufacturers
24 Hanover which were authorized by the West Virginia Bank
25 as part of the \$200,000 loan; but with respect to the

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Martin-cross

of which is attached, that this was free stock and registered in the name of Anne Lamont."

Do you remember writing that?

A Yes, sir.

Q When you spoke with Mr. Snellen Johnson did Mr. Snellen Johnson represent himself as the transfer agent of Navsat or did he represent himself as the president or an officer of Navsat?

A Mr. Segal, I can't tell you, really, but somewhere in the correspondence we had something that showed that Mr. Johnson was the transfer agent. That is the reason we wrote him about it.

Q Take a look at this Exhibit 417. That was the letter to you by Snellen Johnson?

A Yes, sir.

Q In which he signs on behalf of Navsat as transfer agent, isn't that correct?

A That's correct, sir.

Q Did Snellen Johnson ever say to you, "I am president of this company"?

A No, I don't think Mr. Johnson ever said that to me. I think Miss Lamont told me he was president of the company, but I am not even sure about that.

Q When Johnson wrote to you he wrote to you

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Martin-cross

2 as transfer agent, is that correct?

3 A That's correct.

4 Q And that was the reason why when you referred
5 to Mr. Johnson, Exhibit 462, this letter you wrote to
6 Navsat Systems, you referred to Mr. Snellen M.
7 Johnson as transfer agent?

8 A That's correct, sir.

9 Q You also state in there, do you not, that
10 not only are certificates 894 and 895 in your custody,
11 but you also indicate that certificates 1752 and 1753
12 are in your custody?

13 A Yes.

14 Q You recall that?

15 A Yes, sir.

16 Q Did Snellen Johnson write to you in a
17 letter in which he had stated that 894 and 895 had been
18 cancelled by Navsat?19 A We got some correspondence. Without re-
20 ferring to the correspondence, Mr. Segal, I couldn't
21 tell you. Somewhere along the line we got notification
22 that they had been cancelled and that is when we notified
23 the SEC and asked for help.24 Q I show you Exhibit 419. Do you remember
25 that Mr. Johnson wrote to you and stated that 894 and

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2 objections to the government's charge. It would be
3 premature, I would suppose, now to call those to the
4 court's attention, but I do specifically request
5 that the court not charge on the facts, that the court
6 not sum up the facts of this case.

7 THE COURT: I will try to avoid summing
8 up. But I have to refer to certain episodes and
9 incidents. I can't just charge them in a vacuum, but
10 I will be careful to tell them I am not attempting to
11 sum up the evidence and I will not sum up the evidence,
12 and that they should carefully consider all the
13 evidence and all of the arguments made by counsel.
14 That is the way I would give it to them.

15 I don't think with a single defendant there
16 is any point in my attempting to sum up the evi-
17 dence.

18 MR. SCHATZ: The Court of Appeals has
19 indicated in cases of some length, which this one quali-
20 fies for, that it is often preferable to have the
21 court marshal the evidence to some extent.

22 THE COURT: To some extent, but I think
23 they leave it very much to our discretion.

24 I agree with Mr. Segal that it would be
25 better to leave the summing up to counsel rather than for

1 gwa3

2 me to attempt to do it. I will be very careful not to
3 place myself as a summarizer of the evidence in
4 the case.

5 I will go over these charges with you. In
6 the meantime, if you give me on a scratch pad the
7 requests of the government to which you particularly
8 object I will read them over again with that in view
9 and I will be prepared to discuss them with you as
10 soon as you are ready.

11 MR. SCHATZ: One other matter.

12 Mr. Segal apparently has now resolved the
13 issue as to whether he is going to put on a defense.
14 The government now calls for those documents which he
15 intends to offer as evidence in chief under Rule 16.

16 THE COURT: Can you disclose to the
17 government what, if any, documents you expect to produce
18 in connection with the matters that you have not dis-
19 closed, essentially, the West Virginia transaction
20 with regard to which you had some qualms at one point be-
21 cause you didn't know how far you would go into it, if
22 at all?

23 MR. SEGAL: Your Honor, to a large extent
24 I will be using much of the evidence that is already
25 in this case. The additional materials that I have,

1 gwrf 4 Keck-direct

2 Q You have known Miss Lamont, have you not, for a
3 period of how many years?

4 A Since 1970.

5 Q And during that time you have become acquainted
6 with her both on a business and social basis, is that
7 correct?

8 A Yes, sir.

9 Q And during that time have you had an opportunity
10 to discuss with those people with whom you came in contact
11 Miss Lamont's reputation for truthfulness, honesty,
12 veracity?

13 A Yes, I have.

14 Q And can you tell us what that reputation is as
15 you know it?

16 THE COURT: Hold your answer.

17 Mr. Segal, I am sure you are asking the question
18 in good faith but you realize up to this point in the
19 case the veracity of the defendant has not been put in
20 issue.

21 If you represent that she will take the stand and
22 credibility will become an issue, then I will allow the
23 question, otherwise I will not.

24 MR. SEGAL: Your Honor, may we come to the bench,
25 please?

1 gwrf 5

Keck-direct

2 (At the side bar.)

3 MR. SEGAL: Your Honor, at this time I would
4 respectfully move for a mistrial based upon the comment
5 that was made about Miss Lamont taking the stand.

6 THE COURT: You precipitated it by the question.
7 How dar you put a question like that to a witness regarding
8 her credibility when it is not in issue? You asked for
9 the ruling. You shouldn't have asked the question.

10 MR. SEGAL: The Government has asked a number of
11 questions here and the charges themselves all point to
12 her reputation for truthfulness or her truthfulness.
13 If her truthfulness isn't in issue in a fraud case and on
14 the basis of the untrue statements made by the letters of
15 Dr. Stoessinger, the representations she was making to
16 banks about repayment, representations she made to Inspector
17 Slavinsky, then I am not quite sure what other area there
18 has been that has been raised as an issue in this case.

19 THE COURT: You claim you get a character witness
20 only to testify as to her reputation for truthfulness in the
21 community notwithstanding she hasn't taken the stand
22 because it is a fraud charge.

23 MR. SEGAL: That is correct.

24 THE COURT: It is a novel theory. I reject it.

25 MR. SCHATZ: Two things, your Honor:

1 First, obviously if Miss Lamont takes the stand
2 there is no probable problem. Second of all, it is standard
3 boilerplate charge that the defendant has no obligation
4 to take the stand in any case and I assume that your
5 Honor will charge that point.
6

7 THE COURT: Of course, depending on whether she
8 takes the stand or not.

9 He has attempted to erect reputation testimony in
10 the void solely because there is a fraud charge here.
11 There is no basis for that at all. If you think you are
12 right in this novel theory which I believe you have just
13 probably made up, I wish you would cite me some authoritative
14 case.

15 MR. SEGAL: In any case whether the defendant
16 takes the stand or not, that doesn't estop him from putting in
17 reputation testimony.

18 THE COURT: For truthfulness and veracity.

19 MR. SEGAL: Yes.

20 THE COURT: Then I am learning something.

21 MR. SEGAL: I can ask his reputation in the
22 community.

23 THE COURT: For truthfulness and veracity.

24 MR. SCHATZ: We have no problem if Mr. Segal
25 wants to go into this area because in our view we can then

2 inquire into that on cross examination. That would be
3 perfectly acceptable to us under Rule 405.

4 (Pause.)

5 MR. SCHATZ: Furthermore, the Government would
6 have no objection if Mr. Segal would prefer for your
7 Honor to tell the jury and reminding them that the
8 defendant is under no obligation whatsoever to take the
9 stand and no inference should be drawn either way. It is
10 perfectly acceptable to the Government if Mr. Segal would
11 prefer it to have your Honor state that right now.

12 THE COURT: Do you want me to give a cautionary
13 instruction right now, Mr. Segal? I am prepared to do so
14 if you wish it.

15 MR. SEGAL: I think the Court ought to rule on the
16 motion.

17 THE COURT: The motion is denied.

18 MR. SEGAL: I would of course want a cautionary
19 instruction.

20 THE COURT: All right.

21 I am sorry, gentlemen, but I can't agree with
22 what the United States Attorney is saying that this is an
23 admissible area of inquiry. I decline to allow it unless
24 I am shown and cited to authoritative precedents on this
25 subject. I do not feel that just because fraud is charged,

2 and obviously there is a requirement of proof of intent,
3 that that opens up the door to allowing a witness to
4 testify to what the community thinks about her trait
5 for veracity. To me it is a completely non sequitur and it is
6 entirely improper.

7 Her credibility is not in issue. Her intent
8 with respect to these various acts is very much in issue,
9 but that is what this case is all about. You have been
10 trying it on that basis. But to bring in proof of
11 reputation at this point in my view is improper and unless
12 I am cited to authority I won't allow it.

13 MR. SEGAL: I will withdraw it if the Court has
14 ruled that way.

15 THE COURT: Withdraw what?

16 MR. SEGAL: The reputation as the Court has
17 ruled.

18 MR. SCHATZ: Your Honor may wish to read this
19 little portion (indicating).

20 THE COURT: The United States Attorney has
21 shown me a note to Rule 405 which refers to crimes in which
22 the character is injected into the issue. For instance,
23 the chastity of the victim under a statute specifying her
24 chastity as an element of the crime of seduction or to
25 competency of the driver in an action for negligently

2 entrusting a motor vehicle to an incompetent driver
3 or the evidence of violent disposition in the case of a
4 person who is charged with being an aggressor in an alterca-
5 tion. I understand those cases but they have no bearing
6 whatever upon this type of case.

7 All right. I adhere to my ruling unless you
8 gentlemen can illiminate me.

9 MR. SCHATZ: Will you please look at this para-
10 graph, your Honor?

11 THE COURT: Pointing to page 61 of the Federal
12 Rules of Evidence, which is a further provision of the note
13 under Rule 405.

14 (Pause.)

15 MR. SCHATZ: Your Honor, so that the point is
16 clear, if Mr. Segal goes into this, the Government is
17 entitled to go into specific instances of conduct and
18 the rules so provide.

19 THE COURT: Gentlemen, I adhere to my ruling. That
20 is the best I can do. I see no basis for this at all.

21 Do I understand that you do not wish me to give
22 a cautionary instruction?

23 MR. SEGAL: Yes, I do, your Honor.

24 THE COURT: All right.

25 MR. SCHATZ: Your Honor, there is one other thing

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Keck-direct

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I wish to point out.

This whole matter can be resolved if Mr. Segal indicates that his client is going to take the stand. If he is prepared to do that, that might resolve the issue.

MR. SEGAL: Your Honor, I don't have to respond to a question like that.

MR. SCHATZ: I didn't say you did.

THE COURT: 'You certainly don't have to respond to it now, but I respectfully suggest that when you put that question in court you invited a suggestion by me that if you made the representation the question was allowable, otherwise it is not.

However, I don't feel you are under any compulsion to answer his question now. You are entitled to make that decision before you rest your case.

I warn you if you repeat this type of question I want you to be guided by the ruling I just made.

MR. SEGAL: Yes, your Honor.

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Keck-direct

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(In open court.)

THE COURT: Ladies and gentlemen, I think it is appropriate for me to give you a cautionary instruction. In view of the rather extensive colloquy which I had with counsel at the side bar, I think you are entitled to know something about what we talked about in view of what precipitated the conference.

As I told you at the outset, a defendant under our law is presumed innocent throughout the trial and throughout your deliberations until such time, if that time ever comes, when proof of guilt is established beyond a reasonable doubt, and I will explain that in greater detail when I charge you.

In addition to that, this being a criminal case, the burden of proof, the burden of proving the essential elements of the crimes charged is on the Government, the Government has the burden of proving guilt beyond a reasonable doubt, if it can.

The defendant has no burden whatever. The defendant under our law can remain silent, the defendant under our law need call no witnesses, need submit no proof, and the Government's burden remains the same. I would have told you that at the end of the case and I want to tell you now to clear the atmosphere.

So when I said what I said to Mr. Segal it was not

1 at all an invitation to him to do one or the other. I
2 wanted to clear the atmosphere with respect to the
3 propriety of this question put to Mr. Keck. There are
4 some instances, and I don't want to review them because
5 we are in a very technical area of the law about which
6 long articles and discourses of a learned nature have
7 been written, but there are instances where a specific
8 trait of character of a defendant is injected into the case
9 by the nature of the charge, certain types of aggression,
10 rape and seduction, certain other types of crimes which
11 you don't need to be concerned with.
12

13 This isn't that type of case and I have ruled
14 that under the circumstances Mr. Keck could not be used as
15 a character witness in this posture of the case on the
16 basis of the way the proof stands at this time.

17 Remember, the defendant is under no burden to prove
18 anything, the defendant is presumed innocent, and it is the
19 Government's burden to prove, if it can, the guilt of the
20 defendant beyond a reasonable doubt.

21 Just keep these basic principles in mind and I
22 will explain all this in greater detail when I charge you at
23 the end of the proof.

24 MR. SCHATZ: Your Honor, may I approach the bench?

25 THE COURT: You want to come up again?

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Aubert-direct

2 Q And as to the distribution which would flow from
3 the lender out, is that what we have testified to?

4 A Yes.

5 MR. SEGAL: Your Honor, on this basis and because
6 of the complexity of what has been described, I would
7 respectfully offer Exhibit U-1 for identification in
8 order to graphically depict the testimony.

9 THE COURT: 'In order to save time, I have allowed
10 you to help the witness particularly because there
11 was a language problem. The Government objects to this, num-
12 ber one, because it attempts to set forth testimony.
13 It is not based upon exhibits which set forth particular
14 numbers or dates. It is based upon this witness' under-
15 standing of certain transactions as to which I understand
16 the Government has a different view.

17 I have no objection to your using this as an aid
18 to your argument if and when you sum up to the jury, and
19 I will allow the Government to do the same, but to allow
20 this as an exhibit I think would be misleading because it
21 can be interpreted in ways different from the manner in
22 which the witness has testified.

23 MR. SEGAL: Your Honor, we differ on the last
24 description, but if the Court will allow me to use it
25 in making a presentation to the jury, that would be

1 gwr 2 Aubert-direct

2 acceptable.

3 THE COURT: All right. I will allow the Government
4 to use it as well but it will not be marked in evidence.
5 It is purely an aid to your argument to help you put certain
6 facts together in the context in which you wish to present
7 them to the jury.

8 MR. SEGAL: Very well, your Honor.

9 I would press, however, since the Court is
10 disinclined -- I believe this is for the record -- perhaps
11 we might have a ruling on my offer initially.

12 THE COURT: I sustain the objection to the offer
13 which was made out of the hearing of the jury when we first
14 discussed this problem.

15 Q Mr. Aubert, can you tell me what other efforts,
16 if any, you made in order to obtain a guaranty of the
17 guaranty that had been given by Herve?

18 A We stated to Mrs. Lamont that it was not possible
19 to get an endorsement from the UBS, and we asked Mrs.
20 Lamont if she had the possibility to find an endorsement
21 for the promissory note from Herve.

22 MR. SCHATZ: May we have a time, your Honor?

23 THE COURT: Can you fix a date or an approximate
24 date, Mr. Aubert?

25 THE WITNESS: It must be in March, but I cannot

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2 argue that that letter does not signify that the funds
3 were available, that it was an upbeat document, and at
4 that very time Miss Lamont knew there were substantial
5 problems.

6 THE COURT: Then we wasted our time.

7 All right.

8 MR. SEGAL: Your Honor, while we are
9 here, now that you have heard the bad news, maybe I can
10 give you the good news. Anything would be good.

11 Your Honor, I am at a point in my defense
12 where I have very tough decisions to make. I think
13 it is clear to the court as to what they may be.
14 Frankly, up until the recess, the end of the recess,
15 and, in fact, one of the reasons why Miss Lamont was
16 absent or was late, because I spent the entire recess
17 discussing the problem, and this is a very difficult
18 thing, as the court knows.

19 I am trying to sift through my head and from
20 my notes what I think I have got in that record and
21 what is not in the record. It is very difficult.
22 I haven't had a transcript. I have to make this
23 decision now.

24 My decision was pro course of action up until
25 that point. I am frankly not certain right now. I

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2 just don't know.

3 One of the problems that I have got, as the
4 court can realize, I am dealing with a client. I
5 have over the past few weeks, in a very concentrated way
6 beginning on Friday night and lasting well into the
7 night on Saturday and Sunday, reviewed testimony and the
8 facts of the case with the defendant, all of this
9 preparatory to taking the stand. My decision was in
10 favor of that.

11 At this point I am having doubts as to
12 whether or not I should. I have talked to both
13 Miss Lamont and her husband during the recess. I
14 have to be sure that whatever decision is made is a
15 decision that is made with their concurrence and with
16 the approval of both of these people and with full
17 knowledge about what the consequences pro and con
18 are.

19 I don't know at this point. I must say
20 as of this morning I shifted and at this point I am not
21 convinced that what was my former opinion about a course
22 of action for Miss Lamont testifying is the course of
23 action that I should follow. I am going 180 degrees
24 with the client on that point, and it is both too delicate
25 and too risky both in terms of decision-making and in terms

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2 of being afraid of bludgoening or pushing a 'client
3 into a very tough decision in a very short period of time.

4 I am not representing to the court that
5 we are not going to testify, but I am telling the
6 court that at this moment my inclination is otherwise.
7 As your Honor may have seen, a colleague of mine is in
8 the body of the courtroom because I wanted to go
9 over with him -- he 'is in my office -- what I am think-
10 ing and what I have to consider. He was kind enough
11 to come.

12 THE COURT: I think you were very wise to
13 bring somebody else in on it too.

14 MR. SEGAL: I have to because I am
15 get'ing too close to it.

16 THE COURT: There is a horror of post-
17 conviction criticism and litigation which I hope neither
18 of us will have to face. I can feel for what you
19 are going through and I hope you make the decision
20 that is the wisest one.

21 Where does that leave us?

22 MR. SEGAL: What I am saying is it is
23 about 25 of 4 now, which is roughly an hour earlier than
24 we would normally adjourn. If I am not going to put
25 her on I want to offer a passport and I want to offer

1 gwa

2 a hotel bill. If you want me to bring a witness I
3 am going to have to dig some witness out of the hotel.

4 MR. SCHATZ: Would you show it to me?

5 MR. SEGAL: Yes. And the passport.

6 It is a United States Government document. It is a
7 local hotel.

8 THE COURT: I thought she gave up her pass-
9 port.

10 MR. SEGAL: These are cancelled passports
11 from '72 and '73.

12 So I want to put either or both of those
13 passports in and a hotel record which would indicate
14 residence in a New York hotel between two dates. That
15 I think would be it if she does not testify. If she
16 does testify, then she is going to testify.

17 THE COURT: How long do you think it would
18 take her to testify if you do put her on the stand?

19 MR. SEGAL: With what I have got I
20 figured it would run the better part of a day. What
21 I was going to do, your Honor, is this, and I will tell
22 you what my whole strategy was. I was going to
23 flesh it all out as much as I could and then cut it
24 down to the bare bones and let them stand on the land
25 mines and also drop her early enough in the day so they

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2 either have to be ready to the hilt or get blown to bits
3 by not being prepared. That is what I was going to do.
4 I was going to put her in, drop her and leave.

5 THE COURT: That is wise strategy, I must
6 say.

7 You want to adjourn early?

8 MR. SEGAL: If we can.

9 THE COURT: I hoped we could cover at
10 least the charges. Have you got your proposed
11 charges here?

12 MR. SEGAL: I called the office. They
13 are typed up. I have not read them. If your clerk
14 is going to be here --

15 THE COURT: Bring them in early tomorrow
16 morning. Late in the evening wouldn't do anybody
17 any good. I have to read them and prepare my
18 charge.

19 If you decide, by the way, not to put her on,
20 you are going to sum up tomorrow. Do you understand
21 that?

22 MR. SEGAL: I understand that.

23 THE COURT: How long will it take you
24 to sum up?

25 MR. SCHATZ: I am going to take the

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entire summation.

THE COURT: How much do you want on the main part?

MR. SCHATZ: I haven't timed it. I will tonight. I would like an hour and 10 minutes and about a half hour.

THE COURT: And then you will take two hours?

MR. SEGAL: At least. This is my case. I assume the government is going to go first.

THE COURT: They will go first and then have rebuttal.

MR. SCHATZ: I of course sympathize with Mr. Segal's dilemma. If it would be possible for us to somehow get some sort of advance notice, because normally --

MR. SEGAL: You have got notice.

THE COURT: Once you have made your decision firmly, would you please let him know? I think they are entitled to know.

MR. SEGAL: He wants to win the office pool. That office is betting on what I am going to do.

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2 MR. SCHATZ: Would it be possible for you
3 to let me know some time tonight.

4 MR. SEGAL: Whenever I know. Give me
5 your home number and I will call you at home.

6 MR. SCHATZ: I would appreciate that.

7 THE COURT: Tell the jury that they are
8 excused until a quarter to 10 tomorrow.

9 MR. SCHATZ: Off the record.

10 (Discussion off the record.)

11 MR. SIFFERT: At this time the government
12 will hand to your law clerk and Mr. Segal supplemental
13 requests to charge. I would like to number them so you
14 can have them.

15 (Adjourned to December 8, 1976, at 9:45

16 a.m.)

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THE COURT: Very well.

(Defendant's Exhibit Y1 was received in evidence.)

MR. SEGAL: I think we should put that in front of the jury, your Honor.

THE COURT: You can say it at that time, offer it, and the government has no objection.

MR. SCHATZ: Specifically, we will stipulate that that is a passport for Anne Lamont for such-and-such a period of time. We won't object.

THE COURT: Will you state that when you offer it.

MR. SEGAL: Yes. We run into two potential snags, your Honor, one of which may be resolved this morning, the other of which may be more difficult.

Exhibit X1 contains what were copies of a hotel bill from the Barclay Hotel here in New York City. I understand that the government is attempting to check whether or not there is a record of that at the Barclay Hotel, and I don't know what the status of that is.

MR. SIFFERT: Why don't we handle them together?

The other is W1, which is the Hotel Sacher,

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2 S-a-c-h-e-r, in Vienna, a bill. Both of these ap-
3 pear to be customer copies of the bill. What the
4 government did yesterday at 4 o'clock, it started making
5 phone calls and doing investigation to try to confirm
6 the validity of these. If they were valid or verified
7 we would not object. I called the Hotel Sacher last
8 night and talked to Mr. Piesser, and he told me he was
9 the night manager, that the records were locked up;
10 what he could do is check cards for good customers
11 who generally go to that hotel, which he did, and he
12 said there was no card on Anne Lamont, but that did
13 not mean to him she did not stay there at that period
14 of time. He said it was necessary for me to call
15 at 8:30 their time.

16 I called an hour ago and talked to someone
17 who said he was the manager. The manager told me that
18 although I had previously given the information concerning
19 the bill number, room number, date and name, he was
20 unwilling to give me any information whatsoever over
21 the telephone, although I had identified myself as
22 being from the Department of Justice.

23 THE COURT: Couldn't you call the local
24 FBI agent at the embassy?

25 MR. SIFFERT: I asked if a call from the

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2 embassy would mean anything to him and he said no, it
3 had to be in writing, and was very emphatic about that.
4 He said he didn't care whether it was the postal
5 authority from Miami Beach, and I don't know why he
6 picked that --

7 THE COURT: He probably has had some
8 exposure to the authorities before.

9 I don't see that the government can do
10 anything about that.

11 MR. SIFFERT: With respect to the Barclay,
12 a similar type problem arose. We started last night
13 at 4 o'clock making phone calls to the Barclay and
14 found our way to the Biltmore, where the records for
15 the Barclay are actually kept. Mr. Gray went to
16 the Biltmore and went through records and found records
17 for that period of time and could not find a copy of
18 this.

19 The further problem, your Honor, so the
20 record is clear, is that at the time Mr. Segal cross
21 examined Mr. Johnson concerning the two time periods
22 involved here Mr. Segal asked questions concerning back-
23 dating of the exhibits that are in evidence. Mr.
24 Segal told me that I would be surprised, apparently
25 thinking that Miss Lamont would testify at that time, and

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2 I assumed at that time that that meant he had exhibits
3 we had not received, and these two exhibits we
4 saw last night for the first time at quarter to 4
5 and under Rule 16 they should be excluded.

6 THE COURT: I think that the government
7 has gone far beyond the call of duty, Mr. Segal, in
8 trying to help you, and in light of the statements
9 just made I don't see how you can offer these unless
10 you decide to put your client on the stand.

11 MR. SEGAL: Your Honor, if I put my client
12 on the stand for the sole purpose of introducing these
13 two documents would the court be inclined to expand her
14 cross examination beyond that?

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2 THE COURT: Once you put her on the stand as a
3 witness the Government has completely free reign. If the
4 Government wants to enter into a restrictive stipulation
5 with you, that is their business, but from the standpoint
6 of my own functions in the case I would have no right,
7 and I don't believe it would be consonant with my functions,
8 to permit a defendant to take the stand for a limited
9 purpose and be protected against any questions relevant
10 to the issues.

11 MR. SEGAL: She would only be there to introduce
12 the documents, the fact that these are documents she has
13 kept as part of her records, and I would introduce them.
14 That would be the sole purpose of what she would be doing.

15 THE COURT: I understand, and I repeat what I
16 said before. Will the Government please speak?

17 MR. SCHATZ: We oppose that application.

18 THE COURT: I have nothing more to say.

19 MR. SEGAL: Your Honor, I have a plane ticket
20 that I am asking now -- once this problem arose with
21 regard to this Hotel Sacher, and that is in Vienna --
22 I have a plane ticket which indicates that Miss Lamont
23 came out of -- or flew into Vienna on that date.

24 I could obviously call an individual from the
25 airline to testify to that ticket and I believe that

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2 (In the robing room.)

3 MR. SIFFERT: About 60 seconds ago Mr. Gray from
4 the Postal Inspection Service told me that he received
5 a phone call from the Barclay Hotel that they found a
6 document which may or may not be the last page of Defendant's
7 Exhibit X-1. It does, however, apparently reflect a payment
8 on July 1st for a certain amount that may correspond
9 to X-1 and it does indicate some carryover date for
10 which the payment was she stayed at the hotel.

11 The Government would like to see that document
12 to see whether it verifies this thing, X-1. If it does
13 we will have both ends. If it only corroborates July 1st,
14 then we would like the document that is being brought
15 down offered.

16 THE COURT: I am not going to wait. I want
17 this case to go on. It is now 10:20. We are 35 minutes
18 late. We are going to be sacrificing this full day of
19 trial if we wait any longer. Can't we rest at this time
20 on the stipulation that you will concede that a hotel bill
21 in such and such an amount was paid to the Barclay Hotel
22 for dates within a certain period or for some dates which
23 cannot now be ascertained but for a certain year?

24 MR. SIFFERT: We would be willing, your Honor --
25 I think I should confer with Mr. Schatz, if I may.

THE COURT: See what you can do to accommodate

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2 Anne Lamont got money, yes, she got money
3 and she was so intent on stealing that money,
4 according to the government's charge, that \$5000 in
5 interest was paid almost a year later. That isn't
6 mentioned.

7 Government's Exhibit 464. It is a document
8 of Mr. Seifert, who paid \$5000 interest on that loan
9 of Anne Lamont on September 10, 1973, and you have to
10 find that at the time that loan was taken out Anne
11 Lamont did not mean to pay it back, and the government
12 would have you find from her behavior that she never had
13 any intention, she was jaxzing everybody, she was sick,
14 everybody was out somewhere in the Himalayas, and she
15 is paying \$5000 in interest? Is that an indication
16 of thievery, fraud? Is that an indication that as
17 of the time that she took that loan she never had any
18 intention of paying it back? Or is it, as Mr. Martin
19 suggested, that these years there are a lot of people
20 who can't pay back? She got into a strait-
21 jacketed situation and couldn't pay it back. Are
22 we in a criminal trial or is Mr. Martin's solution the
23 solution? Does she owe it? The answer is yes, she
24 owes it. Should she be prosecuted for fraud?
25 The answer is in your hands.

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2 THE COURT: I think you promoted him.

3 What I would like you to do on these charges:

4 I can't spend any time with you but I will consider
5 it very early tomorrow morning. I wish you would just
6 give me hand annotations on your submission of the
7 Government's charges which you object to and the reason
8 why. You can do it cryptically and by making notations
9 and talking to my law clerks about it and the Government
10 can do the same as to your submission, and I will
11 consider the objections tomorrow morning. I can't sit
12 down and have a word by word session with you because
13 there is neither the time nor the opportunity for me to
14 do it.

15 The proper time would have been before your
16 summations, but at this point you will have to rely
17 on my good faith to give a charge that is proper and
18 I will certainly consider your objections to each other's
19 submissions.

20 MR. SIFFERT: At what time do you want this in
21 chambers tomorrow morning, your Honor?

22 THE COURT: Not after 9:00 o'clock. If you could
23 do it immediately, I would appreciate it.

24 MR. SCHATZ: We will do that, your Honor.

25 MR. SEGAL: Is there going to be any opportunity

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2 to review the Court's charge or have a copy of it?

3 THE COURT: Most of my charge will be extemporaneous.
4 I interlaid it with charges I have already prepared
5 on various points in the case and I don't have a copy
6 typed out and I can't give you one. You submitted your
7 supplemental charges this morning and the other charges
8 yesterday and it would have been physically impossible
9 for me to have considered them and prepare a full charge.

10 MR. SIFFERT: I recall one instance when your
11 Honor responded to a jury note and the Government in the
12 opening statement asserted that the theory was there
13 were two frauds in this case, from the very, very outset --

14 MR. SEGAL: The indictment charges three.

15 MR. SIFFERT: It doesn't. Five counts deal with
16 John Barry and Counts 6 throughout charge the separate
17 fraud and there are two victims for each -- three victims,
18 Snellen Johnson, Navsat and the West Virginia Bank is
19 the third.

20 MR. SCHATZ: There is the Navsat-West Virginia
21 fraud, which alleges there are three victims, Johnson,
22 Navsat and the West Virginia Bank, and there is the Barry
23 fraud, the basic fraud perpetrated on John Barry.

24 MR. SEGAL: I don't believe that is what the
25 grand jury returned. That is not what that indictment

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2 false or fraudulent pretenses, representations or promises
3 which are calculated to deceive persons.

4 In short, it embraces any scheme, artifice, trick,
5 device or deceit intended to deprive a person of his money
6 or property whether by false representation or suppression
7 of truth or reckless disregard of the truth.

8 A statement, representation, claim or document is
9 false if it is untrue^o in the main and was then known to
10 be untrue by the person making it or causing it to be
11 made or if that person deliberately or recklessly blinded
12 herself to the knowledge that it was false.

13 A statement, representation, claim or document
14 is fraudulent if it was falsely made or caused to be made
15 with intent to deceive.

16 The fraud condemned by the statute is not
17 limited to act of misrepresentation. A fraudulent scheme
18 may exist although no express misrepresentation of fact
19 is made. Indeed, a statement may be fraudulent if although
20 literally true it omits the material facts necessary
21 to make the statement in the context it is made not
22 misleading. The deceitful concealment of material facts
23 or the deceitful misrepresentation of half truths may
24 also constitute an actual fraud and the devising of the
25 scheme or the obtaining money or property by such half

1 Since an essential element of the crime charged
2 is a specific intent to defraud, it follows that good faith
3 on the part of a defendant is a complete defense.

4 The defendant in this case argues through her
5 counsel by her plea of not guilty, by her arguments in
6 the case and by the proof in the case that she acted in good
7 faith. It is up to you to decide whether that is the case
8 or not. And if you decide that the defendant did act
9 in good faith throughout all these transactions, it is your
10 duty to acquit the defendant on all counts.

11 A defendant has no burden to establish a defense
12 of good faith, however. The burden is on the Government
13 to prove fraudulent intent and consequent lack of good
14 faith beyond a reasonable doubt.

15 However misleading or deceptive a plan may be,
16 it is not fraudulent if it was devised and executed in
17 good faith with an honest belief in the truth of the
18 representations made. At the same time it is no defense that
19 the defendant, knowing that her representations were false
20 or that her actions were fraudulent, spoke or acted out of
21 the belief that ultimately everything would work out so
22 that no one would suffer any monetary loss. Nor is it a
23 defense that the defendant first made her representations
24 in good faith if you find that later at any time charged
25

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within the period covered by the indictment, which is quite a long period which you will see, she realized the representations were false and yet deliberately continued to make them.

It is not a defense, I repeat, for the defendant first to make a representation in good faith if later at any time charged within the period covered by the indictment she realized the representations were false and yet deliberately continued to make them.

I emphasize this, ladies and gentlemen, because unfortunately I think you got a little law in the summations yesterday and you may have gotten the impression from things that were told you by defense counsel that there was a shaft pointed at a specific instance or a specific day and that if you didn't find that there was a fraudulent intent on that particular day or in that particular instance then nothing else counted.

That may have misled you into believing that your consideration had to be limited to that particular incident. The law does not require quite that stringent a line of proof.

For instance, why were you permitted to hear what was done with the money? Why were you permitted to get all those exhibits in evidence and these charts produced

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The Government can also meet its burden that a defendant had actual knowledge of falsity if it establishes beyond a reasonable doubt that she acted with a deliberately reckless disregard of whether the statements were true or false and with a conscious purpose to avoid learning the truth.

The question of defendant's intent is a question of fact that you are called upon to decide just as you determine any other fact issue. It is an important factual issue and it cuts through all the counts in the case.

The intent to defraud involves a state of a person's mind, the purpose with which she acted at the time the acts in question occurred. Intent to defraud rarely can be shown by direct evidence. Occasionally a person writes a letter or makes a statement or leaves a memorandum in which they set forth what they intend. That's done very often in wills, for instance, when you make a testamentary gift and you make a solemn declaration in the presence of witnesses that you intend this, that and the other thing to be done with your possessions after you are dead. But usually in the normal course of events intent is established by circumstantial evidence.

For example, as I have already instructed you, while the success of the scheme is not an element of

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2 constitute knowledge and intent, nevertheless you are
3 entitled to consider, in determining if the defendant
4 acted with such intent, whether she deliberately closed
5 her eyes to the objects or to the facts that certainly
6 would be observed or ascertained in the course of her
7 endeavors.

8 There has been evidence, if you accept it, that
9 Lamont repeatedly made statements to Barry and Stoessinger
10 and others that money was forthcoming and she repeatedly
11 showed letters obtained from Stoessinger to induce the
12 transfer of funds to her for her enterprises, or so the
13 Government contends.

14 If you find that Lamont acted with reckless
15 disregard of whether those statements and documents were
16 true or false and with a conscious purpose to avoid learning
17 the truth, you can draw the inference, if you so choose,
18 that she acted out of guilty knowledge and fraudulent
19 intent.

20 To conclude with respect to this second element,
21 which is so important in the case, knowledge of falsity
22 and specific intent to defraud or deceive is essential
23 and must be proved by the Government beyond a reasonable
24 doubt before a verdict of guilty can be sustained as
25 to the defendant.

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2 the testimony indicates, for instance, that the fact
3 occurred on another date. The law only requires
4 a substantial similarity between the dates alleged
5 in the indictment and the date established by the testi-
6 mony.

7 And the same goes for most of the other
8 factual contentions in the indictment. While, for
9 example, the amount obtained or to be obtained by the
10 scheme to defraud must be in excess of \$5000,
11 at least so far as count 5 is concerned, whether it is
12 charged in the indictment the amount realized or to
13 be realized by the scheme was \$60,000 or some greater
14 or lesser figure is of no particular concern to you.
15 If you found that all of the elements of the crime
16 were proved but that the amount of the fraud amounted
17 to some amount much less than \$60,000 but over \$5000,
18 that would be sufficient. You would be just as
19 much under an obligation to convict, assuming all the
20 other elements had been proven beyond a reasonable
21 doubt, as if it were \$60,000 or more as charged in
22 the indictment.

23 [Again, it is not required that the govern-
24 ment prove that the scheme to defraud started and
25 ended on the dates alleged in the indictment. It is

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2 sufficient if you find that in fact the scheme to
3 defraud existed at some time within the period. The
4 fact that the government may have proved that, on the
5 one hand, the scheme began either before or after January,
6 '72, or that, on the other hand, it ended before or after
7 September, 1976, which was the date of the filing of the
8 indictment, is not of any importance as long as the
9 schemes were in existence at some time between the two
10 dates.

11 Once again, as I have previously said, it
12 is not necessary that the government prove every
13 aspect of the schemes to defraud as they are described
14 in the indictment so long as it proves enough of a
15 scheme to comport with the legal requirements I have
16 already instructed you about. It would still be
17 your duty to convict if you found for each scheme
18 that the government had proven at least one of the
19 pretenses, representations or concealments of a
20 material fact charged in the indictment and that each
21 of the other essential elements that I have previously
22 described to you had been proven.

23 Much of what you, the jury, are required
24 to do requires the use of common sense in applying the
25 legal principles I have given you to the facts as you

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2 common sense and sound judgment that the things
3 asserted in their testimony actually existed or occurred
4 and such other facts appearing in the evidence as will
5 in your opinion aid you in determining the extent to
6 which testimony is worthy of belief. You should ask
7 yourself as to each witness what interest or motive
8 that witness may have to testify in a particular manner
9 and if you determine that any witness has a motive or
10 interest which might lead that witness to testify
11 falsely, ask yourself has he done so or has he told the
12 truth notwithstanding any motive or interest he might
13 have; and even if you do not doubt the good faith
14 of a witness, you should look out for circumstances
15 which might lead to inaccurate testimony, such as
16 faulty memory or inadequate perception, and throughout
17 this process you will be using your common sense and/or
18 understanding to assign to the testimony of each
19 witness the value and weight which best appeals to
20 your sound judgment.

21 For the government, you heard from Dr.
22 John G. Stoessinger, who testified, I think, for the
23 better part of two days; Warren Rubel, who came from
24 London, who has been working in the financial community
25 for some time, and knew the defendant at the time she was

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2 a trainee in an office here in New York; John Barry,
3 who was the central figure in this Studio Centre
4 transaction; Keith Munro of the Bank of Montreal,
5 who was connected with the transfer of the \$60,000
6 to the agency here in New York; Maxwell Lewis, the
7 lawyer for Barry in Toronto, and who was present at
8 a conference attended by the defendant; Stanley Gordon,
9 the agent of the Bank of Montreal here in New York;
10 Louis Weed of the Chelsea National Bank, an employee
11 of that bank; Bernard Duffy, an employee of the Mountain
12 Bell Telephone Company, who came to testify about the
13 \$6000 phone bill; Clarence Johnson of the Central
14 Bank of Denver, who testified with respect to certain
15 checks passing through there; Myra Joseph, a self-
16 employed lady who runs a small boutique shop and who
17 collected a loan that she had made to the defendant;
18 Donald Scoretz, who is self-employed and came from
19 Vancouver, as I recall, and had some contact with the
20 defendant in connection with her transactions abroad;
21 Sherman Everard, the chief pilot of Air Canada, who
22 testified with respect to the flight plan and flight
23 paths of the planes flying the Toronto-New York run;
24 Thomas McGee, who used to work for Chelsea Bank and
25 who spoke to the defendant at the time of this \$60,000

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2 payment.

3 Snellen Johnson, from Salt Lake City, who
4 is connected with Navsat; and Jerry Timothy, who is in
5 various businesses in California and Utah but who
6 comes into the picture as the stockholder whose stock
7 was sought to be freed up to permit certain transactions
8 in Navsat stock; Carolyn Krissman, who is the secretary-
9 typist for Mr. Johnson in his office in Utah; George
10 Martin, the chief executive officer of the West Vir-
11 ginia Bank, who testified at some length concerning the
12 West Virginia transaction for which the Navsat stock
13 was pledged as collateral; Brian Constant, who is a
14 banker and financier from London, England, who is
15 connected with a company noted here as UBAF, but he is
16 in the financial business in London -- I don't think
17 he was a banker, but he was connected with the defend-
18 ant in connection with some of these transactions --
19 Carl Lehman, who worked for a company called Wheat
20 Securities of West Virginia that was associated with
21 a main office in Richmond, Virginia, and who was
22 asked to check out the Navsat stock at the time and
23 determined that it was not salable.

24 Edgar H. O'Brien, vice president of the
25 Manufacturers Hanover Trust Company; Irwin Bornstein,

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the accountant who was so angry about coming here as a witness and who didn't seem to have much love left for the law, the courts or anything else, and he testified about never being in West Virginia in all his life and about paying out some cash at the New York Bank for Savings; Jack Dweck, the attorney who testified to collecting a judgment brought by his client against the defendant; and John Slavinski, the United States postal inspector, who testified briefly and as the government's last witness about some contacts he had with the defendant and a message he got by telegram from her.

You also heard the defense witnesses:

Peter Keck, who spoke to you at length about his transactions with the defendant in connection with the California Piazza enterprises and attempts to obtain a Eurodollar loan for which the defendant was working for him; and you heard from Michel Aubert, the employee of the finance company in Switzerland who testified at considerable length.

The case has presented you with a veritable drama of personal appearances from witnesses from near and far, Barry from Toronto, Constant from London, Aubert from Switzerland, people from Utah and Colorado,

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and you have heard from persons who were in close contact with Anne Lamont: Barry, Johnson, Martin, Keck, Aubert, Dr. Stoessinger, and then you heard from persons who had either brief or extended periods of contact or observation of various transactions. The Toronto banker Munro is one of them, the Barry lawyer, Maxwell Lewis, is another, Thomas McGee, the former Chelsea bank employee, is another, Carolyn Krissman is another, and Bornstein, the accountant, to whom I have already referred.

Ask yourselves as to each one of these witnesses: What did that witness say to us that we can accept as true and accurate? How should we weigh that truth once it is established it is true? What does it mean? What is its significance? There are tantalizing questions you can ask yourselves, some of which you might be able to resolve and some of which you might not be able to resolve. For instance, who was the Bornstein that Martin referred to? Martin said that at one point he ushered Miss Lamont and an accountant named Bornstein into a private room so that they could prepare this financial statement and she signed it in his presence. Bornstein, who was here, said he was never in West Virginia

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in all his life. I don't think there is anything in the record to help you identify who that man was and you have to take it at that, it is something you can't resolve.

There are other very interesting situations which present themselves. Dr. Stoessinger, here is a man in the prime of his life, a teacher, professor, writer, a man who was referred to as third man in the UN, and I don't think there is anything in the record to say he was third man in the UN but he was certainly an important figure in the UN, and he testified to how he got access directly to the Secretary General on one occasion with respect to a letter he wanted Mr. Waldheim to sign and couldn't get it from him and the letter was never signed. And he is a man who graduated from an institution of higher learning with great distinction, having been awarded the honor of a Phi Beta Kappa key which, incidentally, he said he gave to the defendant, he was awarded the highest academic degree which any university can award, and he got that from the Harvard University, a degree of Doctor in Philosophy in Political Economy. He has written a number of books, and this man, who wept in your presence, who received substantial sums of

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2 money, which he said were advances for royalties on these
3 400,000 copies of the book that he thought RCA was going
4 to distribute all over the world to customers and
5 employees -- this man who wept in your presence, in
6 the prime of his life, who has obtained these
7 unusual cultural distinctions, is awaiting sentence by
8 another judge of this court. He pleaded guilty to
9 the misprison of a felony and that is to have had
10 knowledge of the actual commission of a felony recognizable
11 by a court of the United States, to wit, the wire fraud
12 perpetrated on John Barry, and having knowingly failed
13 to make the same known as soon as possible to the
14 authorities of the United States.

15 The information to which he pleaded is in
16 evidence, you can read it. The plea agreement he made
17 with the government is in evidence, you can read it.
18 The information is Exhibit 39 and the plea agreement
19 with the government is Exhibit 38.

20 The plea agreement says he is not to be
21 named as a co-defendant or co-schemer with Anne Lamont
22 and he is not named in the indictment as a co-defend-
23 ant or a co-schemer.

24 The extent to which you can accept or
25 reject the testimony of Stoessinger will take you a

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long way in the solution of the disputed facts of this case. I suggest to you, ladies and gentlemen, that he is one of the important witnesses in this case and your decision with respect to the nature and extent of the probative value of his testimony is one of the important tasks placed before you by this case.

I don't wish to determine in the slightest degree who the important witnesses are and who the unimportant witnesses are, which are the important exhibits and which are the unimportant exhibits. That decision I leave entirely to you. If I make a suggestion with respect to Dr. Stoessinger, it is a suggestion I make with respect and with humility, emphasizing, and again I emphasize, that you and you alone are to make that decision, not I.

I have these Stoessinger letters here which have been talked about so much, Government's Exhibits 11C, 114, the letters shown to Barry and Lewis, according to the government's evidence, and 13B-1 and 14A-1, 21A, the letters shown to Martin, and you remember Martin says he couldn't remember, and in the back Slavinski, the Post Office inspector, got on the stand and said, "Oh, yes, I received these from George

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2 Martin because I wrote the date and my initials on the
3 back of the letter," and they are here for you to
4 examine and determine whether they were used or
5 whether they were received, just what impact this had,
6 with what intention they were used.

7 I don't want to take the time to read them,
8 and it is now 25 minutes to 1, and I would unduly
9 prolong my charge by reading them, but I ask you to
10 recall Dr. Stoessinger's testimony with respect
11 to their composition. I ask you to recall all of
12 the evidence in the case with respect to these let-
13 ters and then to read these letters carefully and
14 come to some conclusion as to what they meant at the
15 time they were used by the defendant Lamont. Were
16 they instrumentalities in furtherance of a fraud
17 or were they accurate representations intended to
18 be accurate and used purely as a peripheral and incidental
19 introduction for a bona fide financial transaction, or
20 is their significance something else that you may
21 wish to determine? That is entirely up to you,
22 ladies and gentlemen.

23 I want to allude for a minute to another
24 matter which has been talked about a good deal but I
25 don't think has been satisfactorily explained, and that

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2 and are not therefore freely transferrable. Free-trading
3 stock by contrast is stock which has been registered
4 with the SEC or which falls within an exemption to the
5 registration requirements. Free-trading stock can be sold
6 or transferred in the stock market without limitations.

7 There is a procedure whereby restricted stock can
8 be freed up and that is to have the restrictions on it
9 removed. The SEC rules provide that the holder of restricted
10 stock can have the restrictions removed by filing a certain
11 form with the SEC along with an opinion of counsel
12 which demonstrates that the company which has issued the
13 stock has complied with certain disclosure requirements.

14 There are other technical details involved with
15 the freeing up process but they need not concern you.

16 In this case there was testimony about the shares
17 of Navsat stock which was held by Jerry Timothy and
18 that stock initially was restricted because of the way
19 it was issued. Timothy sought to have the restriction
20 removed by the procedure I have just described to you.

21 It cuts into this case in a very special way
22 and particularly with respect to Government's Exhibits
23 458-A and 458-B, which I hold in my hand and which you might
24 want to look at and which do not bear any restrictive legend
25 showing that the Navsat certificates were not freely nego-

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2 tiable. They came up in this case in various ways. These
3 certificates, incidentally, are numbered 894 and 895 and
4 sometimes they have been referred to as certificates
5 894 and 895, which they are, and sometimes they have been
6 referred to as Government's Exhibits 458-A and 458-B, which
7 they are. So don't be confused by the reference. We are
8 talking about the two Navsat Systems certificates of stock,
9 each one for 100,000⁰ shares. These certificates have
10 done a good deal of traveling and there has been a good
11 deal of testimony with respect to them.

12 You will recall the testimony by Dr. Stoessinger
13 that during dinner in a Chinese restaurant with the
14 defendant she brought these out and showed them to him and
15 they had some conversation about it.

16 You will also recall the testimony of Snellen
17 Johnson when he was in Geneva, they were brought to Geneva
18 and they were there and were to be used by the defendant,
19 according to Johnson's testimony, for the purpose of
20 this rather substantial financial transaction with Swiss
21 banks, and they didn't have the restrictive legend.

22 You remember I asked him, "Didn't you see these
23 shares of stock had no restrictive legend on it?"

24 "Oh, no," he said, "that was an oversight."

25 "When did you first notice it had no restrictive
legend?"

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2 "I noticed that when I was interviewed by the
3 Government this year," he said.

4 You should ask yourselves is it reasonable to think
5 that a man of this background and experience conferring
6 with a person experience in the financial community about
7 getting a substantial loan would look at these two
8 certificates of stock and never notice that it had no
9 restrictive legend on it, and that also applies to this other
10 American Ranch stock and I don't want to take the time to go
11 into that.

12 They were in Geneva too with the defendant and
13 Snellen Johnson with these two certificates of stock
14 and "Oh", says Snellen Johnson, "I have pledged restricted
15 stock with Swiss banks."

16 Well, lo and beho'd, these shares of stock
17 appear in West Virginia, and they appear in West Virginia
18 a good deal later. You know, the Geneva incident
19 occurred in March 1971 -- keep that in mind -- and
20 that is the first time we see these stocks close to a
21 transaction allegedly to do a little financing and
22 getting money for them. That is March '71. Then in
23 the Chinese restaurant in New York we see them again through
24 the testimony of Stoessinger, and that is in May of '72,
25 very shortly before we see them again through the testimony

101a

1 rmrf 5

2 of George Martin -- is it George Martin?

3 MR. SIFFERT: Yes, your Honor.

4 THE COURT: We see them through the testimony
5 of the banker from West Virginia, Mr. Martin.

6 MR. SIFFERT: That is correct, your Honor,
7 George Martin.

8 THE COURT: I don't know  I should be worried
9 about rebaptizing him. We know who he is. You remember
10 I asked Martin, I said, "There is no restrictive legend
11 on this, is there?"

12 "Oh, no," he said.

13 "What would you have done if there was?"

14 "I would never have loaned the money on them
15 if there was."

16 "Well, why?"

17 "Because it was not freely negotiable."

18 You see, the bank would have gotten a pig in
19 a poke, in effect, if there were restrictive legends
20 on these shares of stock and when this stock was offered
21 to Mr. Martin for this \$200,000 loan he would have
22 rejected it because they were not freely tradeable or
23 freely negotiable. But he took them, he checked them,
24 the market, such as it was, indicated they were worth the
25 loan, and he went ahead with the loan.

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2 There has been a good deal of discussion about
3 what he relied on and I suggest that you think about
4 his testimony very carefully because, as I recall, he said
5 he not only relied on the stock certificates, numbers
6 894 and 895, which were not in his hands but which were
7 deposited in the Manufacturers Trust Company, which he was
8 told about -- didn't see them until a little later, and
9 he says to his chagrin -- but he relied upon the signed
10 financial statement which was signed in his presence
11 by Miss Lamont, and he said he relied on the defendant's
12 appearance, on the defendant's knowledge of finance,
13 and on the defendant's letters of recommendation.

14 Did he? Did he rely on all of those things?
15 Did he rely on some of them, did he rely on none of them?
16 You should ask yourselves those questions because your
17 answers to those questions will take you a long way in
18 resolving the nature of this West Virginia Bank transaction.

19 Incidentally, if you find beyond a reasonable
20 doubt that Martin's bank, the West Virginia Bank, was
21 defrauded and that the essential elements of the crimes
22 charged have been proven beyond a reasonable doubt with
23 respect to the West Virginia Bank transaction, it is not
24 necessary for you to find also that Navsat or Johnson were
25 defrauded; it is enough if one of the three, either

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2 permit this matter to enter into your appraisal of the
3 evidence in any way whatever.

4 There was evidence in this case in the form of
5 documents and grand jury testimony admitted to show that
6 Anne Lamont did not file income tax returns for the period
7 1971 through 1975 and that she earned no income during
8 that period.

9 This evidence was admitted solely with respect
10 to the issue of the accuracy of any financial representations
11 she made about herself and it should not be considered
12 by you in any other respect, it should be considered only
13 with respect to its bearing, if any, upon the issue of
14 accuracy of her financial reputations and only in that
15 respect.

16 With respect to charts, you have been asked to look
17 at several exhibits prepared by the Government, Exhibit 217,
18 with respect to the defendant's distribution of \$60,000 in
19 March '73, 218, a chart with the respect to the acquisition
20 of the loan from the West Virginia Bank, Exhibit 219, with
21 respect to the transfer of the proceeds of the West
22 Virginia Bank loan, Exhibit 295, the John Barry travel between
23 February 18, 1973 and April 18, 1973.

24 You have also been shown a defendant's chart
25 which is marked for identification and is not evidence

104a

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2 and I will explain why in a minute, which was used as a
3 guide for the testimony of Michel Aubert and which was used
4 during the summation of Mr. Segal yesterday.

5 You have also been shown blowups of exhibits
6 for easier examination and reading but they are not
7 really in the category of charts.

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2 The reason why these charts have been put into
3 evidence is because they purport to be a pictorial
4 or graphic representation of information set forth either
5 in the testimony of witnesses or in documents that are
6 exhibits in evidence. They are visual aids. They are
7 designed to help you to understand what is in the testimony
8 and what is in the exhibits.

9 The charts and schedules are not by themselves
10 independent evidence. In other words, the evidence consists
11 of the exhibits on which the charts are based and the
12 testimony upon which the charts are based and other
13 papers received in evidence and the charts and schedules
14 have only such probative value as you attribute to the
15 exhibits, the testimony and the basic records upon
16 which they are based.

17 It is for you to decide whether the charts
18 and the schedules correctly represent the data set
19 forth in the testimony and exhibits upon which they are
20 based.

21 Therefore, you are to give no greater consideration
22 to these charts and schedules than you would give to the
23 testimony and exhibits upon which they are based.

24 With this instruction in mind, you are entitled to consider
25 the charts received in evidence if you find that they

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2 are of assistance to you in analyzing the evidence and
3 understanding it.

4 Now a word with respect to Michel Aubert.
5 Why did I allow a chart that wasn't put into evidence?
6 Michel Aubert spoke English but with a very heavy
7 French accent. If you recall, he occasionally slipped
8 French words in and the French words had to be translated
9 as we went along.

10 We were all straining to make sure we understood
11 what he said because of his accent. Because of that
12 I invited Mr. Segal to ask him leading questions so as
13 to relieve him of the strain of trying to express himself
14 in English and also in order to help you to understand
15 what he was trying to say.

16 This chart, Exhibit U-1, was prepared by Mr.
17 Segal in an effort to help him to clarify a rather complex
18 financial interrelationship, and Mr. Segal was allowed
19 to use it to sum up to you in order to assist him to explain
20 Michel Aubert's testimony.

21 Now, the Government does not agree with a great
22 many of the purported facts which are set forth there
23 and would not consent to its admission in evidence because
24 it is based upon controversial testimony, highly controverted
25 testimony, and it would not be right for a witness to

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2 draw a picture of his testimony.

3 Ordinarily witnesses are not allowed to draw
4 pictures or prepare charts. The chart comes in when
5 you have dispersed pieces of paper, a lot of little entries
6 that are spread out all over the place, like hotel records,
7 travel records, books of account, entries in books of
8 account and so forth. So these visual aids or graphic
9 representations pull them all together so you can
10 see them.

11 But because of the controversial nature of the
12 Aubert chart, it was not permitted to go into evidence
13 and the others were. You can look at the charts or not look
14 at them just as you please, but they are before you for your
15 consideration and for whatever use you want to make of them.

16 You must not permit any question of penalty
17 that may be imposed in the event of a conviction to
18 enter into your deliberations or to influence your verdict
19 in any way.

20 The duty of imposing sentence in the event of a
21 conviction rests squarely upon my shoulders and it is a
22 responsibility for the Court and you should not be
23 concerned with it in any way.

24 Under your oath as jurors you are not to be
25 moved by sympathy. You are to be guided solely by the

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2 The court also indicated that there is
3 a defense everything would work out, that however mis-
4 leading it would work out, that if there was a belief
5 everything would work out.

6 There is no belief everything would work
7 out. I believe the court erred and this was repeated
8 twice, in stating that if there was no intent ab initio
9 in obtaining these goods or these moneys and then at
10 a later time there was a change of mind, then and in that
11 event they could infer bad faith in getting it.

12 I don't believe that that is accurate,
13 your Honor. I believe that if there is a scheme, that
14 the scheme either has to indicate a progression to a
15 point where the money is obtained and when that money
16 is first obtained, that is the only intent which is
17 requisite. This is particularly important because
18 the court did comment about, unfortunately, they had
19 gotten a little law yesterday and then you talked about
20 a shaft pointed at a specific date and they may have
21 been misled.

22 I believe at that point that subsequent,
23 say, to March of 1973, if Anne Lamont did not intend to
24 defraud John Barry in March of '73 and then perhaps in
25 May or August, or whenever, she did decide that she was

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2 going to keep that or not pay it back, I don't believe .
3 that that accurately reflects the law. She had to
4 have --

5 THE COURT: I think you are so wrong on
6 that that I don't feel that I need to discuss it with
7 you. Suppose the computer puts a million dollars in
8 your pocket through a bank error and you pick up your bank
9 statement and not intend to go to defraud the bank at
10 all but you have been made the present of a million
11 dollars. You mean to say your retention of that
12 million dollars thereafter is not a fraud.

13 MR. SEGAL: No, because then you know you
14 are not entitled to it but there you have not done
15 anything to get it.

16 THE COURT: You have done nothing to get?
17 You are a customer at the bank. You have entered into a
18 relationship with the bank in good faith to get a bank
19 statement every month. So you are in good faith the
20 whole way through until you get the million dollars
21 for nothing.

22 MR. SEGAL: You may be guilty of conversion
23 but you are not guilty of fraud. You certainly
24 can't keep that money but you can't be charged with
25 fraud in obtaining that money.

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2 THE COURT: The charge that I gave was
3 very carefully phrased. I went through it this
4 morning. I can't find my exact words at this moment.

5 MR. SEGAL: It was just before you went
6 into the prime issue and before you talked about
7 similar acts. It was before that. You also said
8 something about why were they permitted to hear something
9 that was done.

10 In the second area you were in knowing,
11 wilful and intent. You just mentioned that.

12 THE COURT: I am getting close to it now.
13 I said:

14 "Nor is it a defense that if the defendant
15 first made a representation in good faith, if later
16 at any time charged within the period covered by the
17 indictment she realized the representations were false
18 and yet deliberately continued to make them."

19 MR. SEGAL: That is the area, your
20 Honor --

21 THE COURT: You disagree with that?

22 MR. SEGAL: Yes.

23 THE COURT: All right. Then I am sorry.
24 I stay by what I charged. I think this is perfectly
25 good law.

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2 MR. SEGAL: Your Honor also, in backing that
3 theory up, stated to them why were you permitted to
4 hear what was done with the money as an indication that
5 that might have a bearing on what her intent was.

6 Well, that had a bearing on whether or not
7 the money was used for her own purposes, perhaps.
8 It may have had --

9 THE COURT: The way you spoke to them yester-
10 day she could have taken all -- as long as she was
11 simon-pure on one day she could have taken all this money
12 and spent it at Monte Carlo without accounting to anybody,
13 it's nobody's business what she did with this money as
14 long as her intent at the time she talked to these
15 people was to finance their loan. She was in the
16 area of speculative financing and she was going to
17 do her best for them and she meant it, but 10 days
18 later, when she gets some advance cash, she spends it on
19 her own purposes, and you say that all that means is
20 she spent it for her own purposes.

21 What kind of guidance would I be giving
22 the jury if I tell them that?

23 MR. SEGAL: That isn't it. That
24 portion of the testimony is contested.

25 THE COURT: Let's forget that for the mo-

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2 ment. Let's assume they find that she spent it
3 for her delinquent phone calls, on a hairdresser and
4 a few other things. What significance has that? What
5 would you have told the jury the significance of that tes-
6 timony was?

7 MR. SEGAL: That may be circumstantial
8 proof of what her intent was but the fact --

9 THE COURT: Now we are getting some-
10 where.

11 MR. SEGAL: But the fact is that if she
12 changes her mind afterwards -- that is only proof that
13 can be used if at the time that she took it she intended
14 to defraud and then the fact that she spent it for
15 other purposes may be indicative of what that original
16 intent was in obtaining that loan, but if she did not
17 have that bad intention to begin with and then at a
18 later time that came on her, then I am saying that
19 what happened at that later time is of no moment.

20 THE COURT: I think you are splitting
21 a law school hair with me.

22 MR. SEGAL: I am so far out of law school
23 and I am losing so many hairs I don't think that is
24 right.

25 THE COURT: You are proposing a proposition

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that is a little bit like how many angels can dance on the point of a needle. I don't think we will ever get to that case in our lifetime. It is so unrealistic to talk about no intent in the first place but the intent arises later when she decamps with the money. It is like the teller who leaves the bank with the \$20,000 cash in his pocket of the bank's money and he just does it absent-mindedly, but when he gets outside the bank he says, "I forgot to put this in the till. I will walk away with it."

You mean to say that that teller hasn't committed a fraud and larceny on the bank?

MR. SEGAL: Larceny, yes. And particularly in the situation of a false statement. I am analogizing to the stock fraud situation where I show you a prospectus or that prospectus contains false statements and you act on that, and it is on the basis of that which you do act, then that is the sole basis on which I should be charged. If I am trying to mislead you and I cause you to do it, that is relevant.

THE COURT: What else have you got? I will have to reread these cases. I don't think you are right.

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2 wasn't enough.

3 MR. SEGAL: Your Honor then went on to
4 Mr. Stoessinger, and I would respectfully indicate that
5 the description of Mr. Stoessinger, the dwelling on his
6 background, on the fact that he was a Phi Beta Kappa
7 man, the highest academic degrees, and he wept in their
8 presence, is of no moment. His being in the prime
9 of life and his unusual cultural distinctions are of no
10 moment.

11 THE COURT: How about the \$40,000?

12 MR. SEGAL: How about the \$80,000 that he
13 took?

14 THE COURT: I mentioned that, too,
15 didn't I?

16 MR. SEGAL: No, I don't think so. The
17 court did something that I would indicate may be of very
18 delicate importance. First the court has emphasized
19 Stoessinger as a key witness --

20 THE COURT: I didn't say key witness. I
21 never said the word "key." I said "important" wit-
22 ness. He is na important witness and I have a right
23 to tell them that.

24 MR. SEGAL: Your Honor indicated that Stoes-
25 ainger, with all of these backgrounds, with all of this

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2 behavior, then pleaded guilty to a misprision of a
3 felony, and you invited them to read the indictment, you
4 invited them to read the agreement with regard to his
5 plea.

6 THE COURT: I invited them to read the
7 information and the plea agreement.

8 MR. SEGAL: Yes, your Honor. I believe
9 that the stressing of that witness, the fact of his
10 background, the fact of the obvious intellectual
11 achievements of that man is one in which if that jury
12 is told not only that he is important but he
13 pleaded guilty to a crime which relates to this crime,
14 if he pleaded and he says that he is guilty, then of
15 necessity because he pleaded to a crime involving
16 Anne Lamont, Anne Lamont must therefore be guilty.

17 THE COURT: I can't help your construction
18 or your misconstruction of what I said. He is not
19 charged as a co-schemer or accomplice and I said that,
20 that he was not charged in this indictment, that the
21 government agreed not to charge him, and I also asked
22 a great many questions after I talked about him and I
23 put those questions squarely to the jury and I think
24 those questions are necessarily in this case.

25 MR. SEGAL: With regard to those ques-

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2 tions, you did say, "I don't want to indicate in the
3 slightest degree what you attribute as important,"
4 but I believe we must all face what is the fact, that
5 anything coming off that bench --

6 THE COURT: You are not stating a
7 legal exception. You say my charge was one-sided
8 and that it tended to prejudice the defendant?

9 MR. SEGAL: Yes, your Honor.

10 THE COURT: Everything I said about
11 Stoessinger?

12 MR. SEGAL: Yes, your Honor.

13 THE COURT: I won't change a word of it.
14 What else have you got?

15 MR. SEGAL: Your Honor then took the
16 Stoessinger letters and in fact used them --

17 THE COURT: What I did, I did. It's
18 on the record. I don't want to hear you amending the
19 record because your record is of no importance.
20 It is probably inaccurate anyway. What I did was
21 taken down by the stenographer.

22 MR. SEGAL: Your Honor, I merely have to
23 lay a predicate for the basis of my objection.

24 THE COURT: The only predicate you need
25 to lay is with respect to the Stoessinger letters.

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trying to quote me in a way that is completely erroneous.

MR. SEGAL: Your Honor, I mean by the way the court marshaled its statements with regard to the alternatives that it was a clear implication from the court's statements that No. 1 be taken.

THE COURT: You are reading between the lines?

MR. SEGAL: I have to, your Honor.

With regard to circumstantial evidence, the court went on on the fact that Barry goes to Europe and has several books under his arm and he took him through Customs -- the court is inviting the jury, with regard to its charge or circumstantial evidence, not just to take evidence but to guess. This one shaft of light and that idea is one in which we are asking this jury not to perform on the basis of the evidence they heard but rather on the basis of conjecture, which I believe is impermissible.

MR. SCHATZ: Your Honor, the record is clear on that.

MR. SEGAL: What does that mean?

MR. SCHATZ: That your charge was absolutely correct on that, your Honor.

MR. SEGAL: Your Honor, with regard to

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2 the testimony of Aubert, there was no controverting of
3 that testimony. The cross examination did not hit
4 any of the substantive materials that Aubert hit.
5 So that there is no controverted testimony about what
6 he said, they are just unhappy with it.

7 THE COURT: They are not unhappy with it.
8 They talked about him in their summation almost as
9 though you did them a favor to call him as a witness.
10 They referred to Aubert so much for a while I was
11 wondering whether you had called him or they had called
12 him.

13 MR. SEGAL: Once you have good testimony
14 there is no way to make it go away and you try to
15 make believe it is yours.

16 THE COURT: That is a good tactic.
17 Nobody quarrels with Aubert and nobody attacked him
18 as saying anything inaccurate, he just talked about how
19 hard it is to do business in the higher realms of
20 finance and what happened here. So what?

21 MR. SEGAL: Your Honor, with regard to
22 the jury, you indicated what I thought was equivalent
23 to an Allen charge and it wass essentially this, you
24 indicated that it is a consensus, and I would respectfully
25 call the court's attention to the fact that this is not

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2 THE COURT: Send all the exhibits and after
3 they have been handed in to the jury, send the marshal
4 out.

5 MR. SEGAL: I would object to the intro-
6 duction into the jury room of those charts.

7 THE COURT: The objection is overruled.
8 Send him in.

9 (Pause.)

10 THE COURT: Will you identify yourself
11 for the record, please.

12 MR. CARTAGENA: Peter A. Cartagena.

13 THE COURT: Mr. Cartagena, I have just been
14 advised that there was a request from the jury as
15 manifested by Court's Exhibit 12 in which they asked
16 for certain exhibits and certain other information
17 and that when this came to court a check was made on the
18 exhibits and it was agreed by everybody that there was
19 no Exhibit 277, and so at that point something happened.
20 I want you to tell me exactly everything that happened
21 beginning with the incident after this note was
22 first handed in to the court.

23 MR. CATAGENA: Right. Madam Clerk gave
24 me the exhibit, said there was no Exhibit No. 277
25 and I gave it to the forelady of the jury.

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2 however. The burden is on the Government to prove
3 fraudulent intent and consequent lack of good faith
4 beyond a reasonable doubt. If the Government fails
5 to prove this, it is your duty to acquit.

6 However misleading or deceptive a plan may be
7 it is not fraudulent if it was devised and executed in good
8 faith with an honest belief in the truth of the repre-
9 sentations made. At the same time, it is no defense
10 that the defendant knowing that her representations were
11 false or that her actions were fraudulent, spoke or acted
12 out of the belief that ultimately everything would work
13 out so that no one would suffer any monetary loss,
14 nor is it a defense that the defendant first made
15 her representations in good faith if you find that later
16 at any time charged within the period covered by the
17 indictment, which is quite a long period, which you
18 will see, she realized her representations were false
19 and yet continued to deliberately make them.

20 It is not a defense, I repeat, for the defendant
21 first to make a representation in good faith if later at
22 any time charged within the period covered by the
23 indictment she realized her representations were false and
24 yet continually continued to make them.

25 I emphasize this, ladies and gentlemen, because,

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2 unfortunately, I think you got a little law in the
3 summations yesterday and you may have got even the
4 impression from things told you by defense counsel that
5 there was a shaft pointed at a specific instance or a
6 specific day and that if you didn't find there was a fraudu-
7 lent intent on that particular day or in that particular
8 instance, then nothing else counted.

9 That may have misled you into believing that
10 your considerations had to be limited to that particular
11 incident or day. The law doesn't require quite that
12 stringent a line of proof. For instance, why were you per-
13 mitted to hear what was done with the money? Why were
14 you permitted to get all these exhibits in evidence
15 and these charts produced about what was done with the
16 money? Because it is possible under the evidence in
17 this case for you to reach the conclusion, and I am
18 saying possibly because there are many possibilities,
19 and this is only one of them, but there is a possible
20 conclusion that you might come to to the effect that once
21 this defendant got this money into her hands she used it as
22 her own and at that point never intended to repay or return
23 it.

24 The money to Stoessinger, the money for the de-
25 linquent telephone account in Colorado, the money for



ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

JSS:wp

United States Department of Justice

UNITED STATES ATTORNEY

SOUTHERN DISTRICT OF NEW YORK

ONE ST. ANDREW'S PLAZA

NEW YORK, NEW YORK 10007

October 22, 1976

Marvin B. Segal
Segal & Hundley
745 Fifth Avenue
New York, New York

Re: United States v. Lamont
S 74 Cr. 762 (ELP).

Dear Mr. Segal:

This is to advise you that pursuant to F. R. Cr. P.
16 (d)(1) the Government today submitted an application to the
Court in camera, ex parte in the above-captioned matter.

Very truly yours,

ROBERT B. FISKE, Jr.
United States Attorney

By: 

JOHN S. SIFFERT

Assistant United States Attorney

Telephone: 212-791-1922

cc: Hon. Edmund L. Palmieri
United States District Judge



LAW OFFICES
SEGAL & HUNDLEY
745 FIFTH AVENUE
NEW YORK 10022

November 4, 1976

MARVIN B. SEGAL
WILLIAM G. HUNDLEY
PLATO CACHERIS
D. C. & VA. BARS ONLY
JAMES E. SUARY
D. C. BAR ONLY

1234
PLAZA 3-7800

WASHINGTON OFFICES
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WASHINGTON, D. C. 20006
202-333-3593

Honorable Edmund L. Palmieri,
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: U.S.A. v. Anne Lamont
S 74 Cr. 762 (ELP)

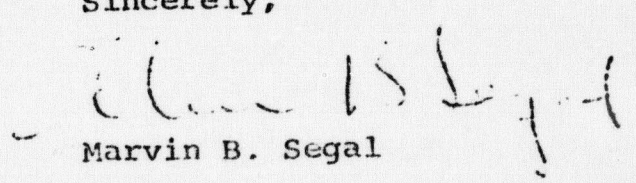
Dear Judge Palmieri:

I have reviewed the letter of October 22, 1976 from the Government in the above captioned case regarding an in camera, ex parte application.

Since this matter is scheduled for trial on November 22nd, it is respectfully requested that not only the fact of an application with respect to a pending case must be made to defense counsel, but that the subject matter and the basis for the ex parte nature of such an application should also be placed upon the record.

In the present context, I am unable to take any stand, if indeed one is necessary, on the basis of the information furnished. I would therefore request that the Court direct the Government to furnish particulars to counsel, or, in the alternative, that some record be made in which some justification can be stated for the extraordinary procedure employed here by the Government.

Sincerely,


Marvin B. Segal

MBS:mr1

cc: Honorable Robert B. Fiske,
U.S. Attorney for the
Southern District of New York
John S. Siffert, Esq.,
Asst. United States Attorney

LAW OFFICES
SEGAL & HUNDLEY
745 FIFTH AVENUE
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November 19, 1976

PLAZA 3-7300

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JAMES E. SHARP
D.C. BAR ONLY

Honorable Edmund L. Palmieri,
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: U.S.A. v. Anne Lamont
S 74 Cr. 762 (ELP)

Dear Judge Palmieri:

Reference is made to my letter of November 4th regarding an in camera, ex parte application made by the Government on October 22, 1976, in the above captioned matter.

To date, I have received no more information than I had at the writing of the November 4th letter, and I would respectfully request that this matter be delineated for the undersigned on Monday, November 22nd, which will be the first trial day. It is submitted that counsel is entitled to know what the basis for such an extraordinary application is and whether or not that type of application is justified. In any event, I would request that measures be undertaken which would preserve both the application and my two requests for possible appellate review by sealing the Government's application and any disposition of this application that was made by the Court.

Sincerely,

Marvin B. Segal
Marvin B. Segal

MBS:mrl

cc: John S. Siffert, Esq.,
Asst. U.S. Attorney

USA 83a-475
(ED. 4-23-71)

Def.
EXHIBIT

**U. S. DIST. COURT
S. D. OF N. Y.**

W-1 Id.

FPI-MI-8-26-76-25M-5318

her
**Das bevorzugte Geschenk
für jede Gelegenheit
und eine echte
Wiener Spezialität**

**VERKAUF UND VERSAND DER
Original Sacherstorte
IN ALLE WELT
Sacher Confection
Sacherstube**



NUR ECHT MIT DIESEM SIEGEL

RECHNUNG № 011090

P
Zimmer Nr. 1

Name Mrs. Anne LAMONT

4.3 Schen

Datum	Text	Debit	Credit	Saldo
848E10 JAN 72	LOGIS	★ 500.00		★ 500.00*
34E10 JAN 72	RDAR	★ 92.00		
35E10 JAN 72	RDAR	★ 46.00		
36E10 JAN 72	RDAR	★ 396.00		★ 1.034.00
302E11 JAN 72	CAFE	★ 70.00		★ 1.104.00
577D11 JAN 72	TEL	★ 2.053.00		★ 3.157.00
685D11 JAN 72	LOGIS	★ 500.00		★ 3.657.00*
199E12 JAN 72	ETGI	★ 130.00		
200E12 JAN 72	TEL	★ 41.00		★ 3.836.00
				<u>113</u>
				3949

*3836
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10508
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JAN 11-12 1972

POSTSPARKASSA WIEN 13.870

BREISACH PINSCHOF SCHOELLER

Bankkommanditgesellschaft

A-1011 WIEN - Universitätsstraße 5 - KTO. 30 700 900

126

The Barclay
111 EAST 48TH STREET
NEW YORK, N. Y. 10017 (212) 755-5900

ROOM	START HERE	(LAST) NAME (FIRST) (MIDDLE INITIAL)	OUT	RATE
IN		STREET HOME ADDRESS APT.	ROOM TAX	
		CITY STATE ZIP CODE	OCC. TAX	
ROOM CLERK		FIRM NAME	R	ACCOMMODATIONS

Docket
EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.
X-1 Id.
FPI-NI-9-26-76-25X-5518

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BILLING ADDRESS IF OTHER THAN INDICATED ABOVE

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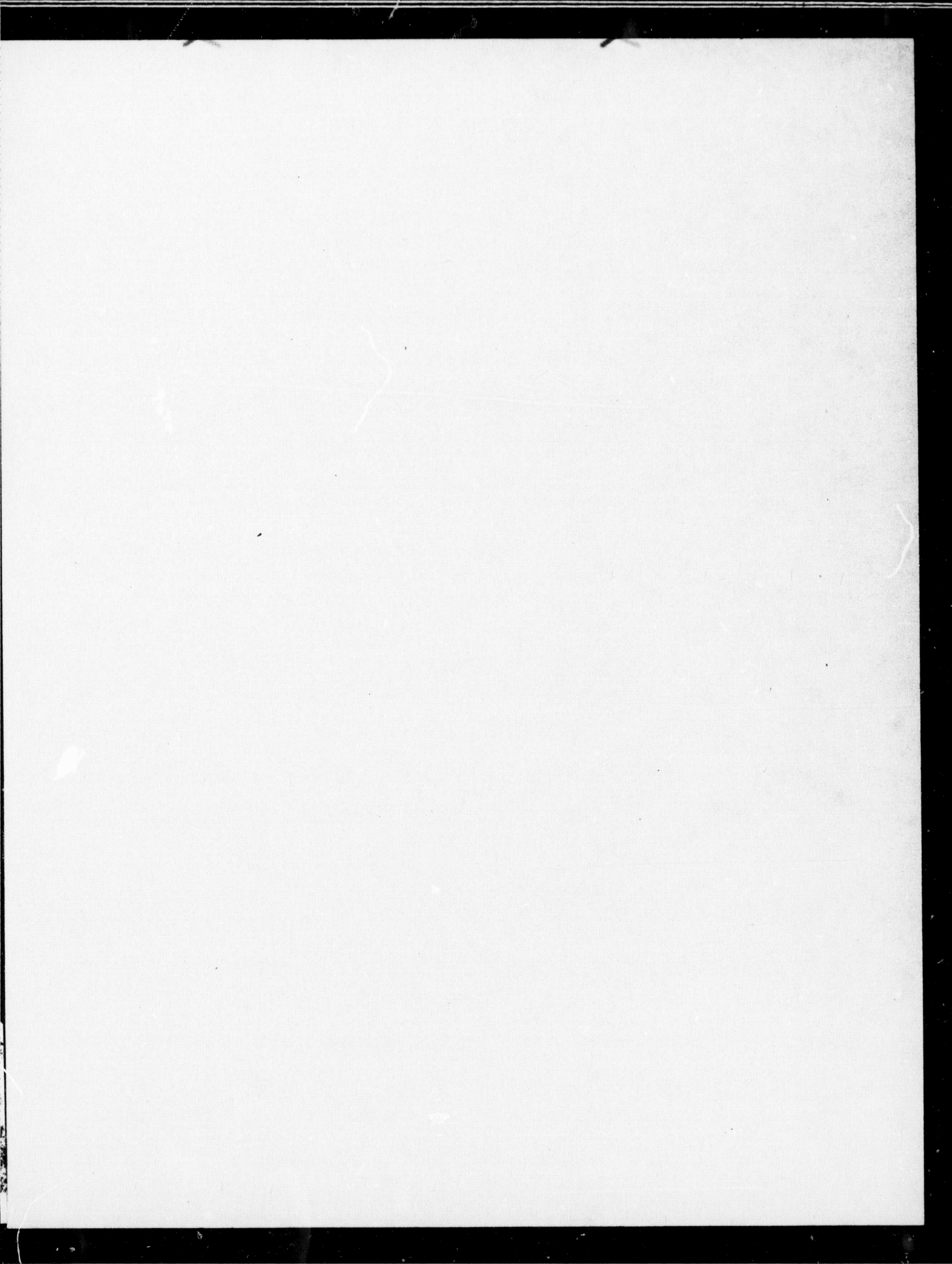
STREET ADDRESS ROOM OR FLOOR NO.

CITY STATE ZIP CODE

YOU WILL RECEIVE YOUR BILL FROM OUR ACCOUNTING DEPARTMENT WITHIN 10 DAYS.

GUEST ADVICE

GUEST'S SIGNATURE



ISSUED BY **TRANS WORLD AIRLINES, INC.** PASSENGER TICKET AND BAGGAGE CHECK
 SUBJECT TO CONDITIONS OF CONTRACT ON PASSENGER'S COUPON
PASSENGER'S COUPON

NAME OF PASSENGER NOT TRANSFERABLE
1-10-72
 DATE OF ISSUE

ENDORSEMENTS
 NOT VALID BEFORE 12
 NOT VALID AFTER 12
 TICKET DESIGNATOR/TOUR CODE

ORIGIN
 DESTINATION
 ISSUED IN EXCHANGE FOR
 DATE AND PLACE OF ORIGINAL ISSUE

FOR ISSUING OFFICE ONLY
 AIRLINE FORM SERIAL NUMBER
015:20 3:282:219

FARE BASIS CARRIER FLIGHT/CLASS DATE TIME STATUS ALLOW
 FROM London Y 0000 12 0000 OK
 TO Vinon Y SR 434 12 0000 OK
 TO London Y SR 434 12 0000 OK

FARE 2.00
 CONJUNCTION TICKETS

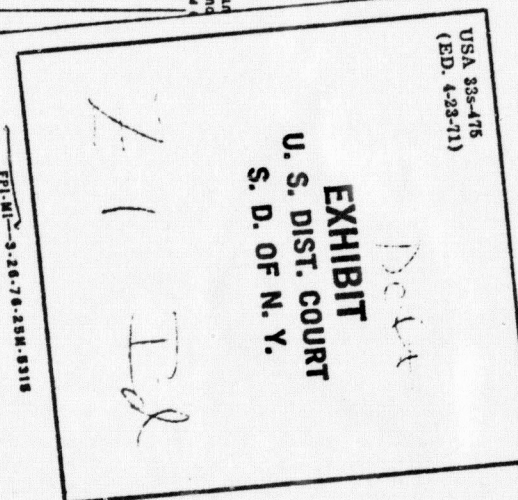
FORM OF PAYMENT

BAGGAGE CHECKED UNCHECKED
 PCS. UNCK. WT. PCS. UNCK. WT.

FARE TOTAL
 TAX
 LEGAL AMT. PD.

1-10-72
 London

PURCHASE OR RESELL THIS TICKET
 SOURCE THAN TRANS WORLD AIRLINES
 AUTHORIZED TRAVEL AGENT



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In the Matter of the Application of :
JOHN BARRY, Witness,
Re: UNITED STATES V. LAMONT :
-----x

Before: HON. THOMAS P. GRIESA,
District Judge.

New York, New York
September 13, 1976 - 12:10 p.m.

Appearances:

ROBERT B. FISKE, JR., Esq.,
United States Attorney for the
Southern District of New York,
By: IRA L. SORKIN, Esq.,
STEVEN M. SCHATZ, Esq., and
JOHN S. SIFFERT, Esq.,
Assistant United States Attorneys.

DANIEL GREENBERG, Esq.,
Attorney for witness John Barry.

1 elmch

2 prepared as a witness in the case so that when the time
3 of trial comes he will be able to give testimony in a
4 proper fashion.

5 Parenthetically, Mr. Barry has made a
6 number of these trips, not under subpoena, for which he
7 has not been reimbursed his costs of travel and his
8 expenses while here. In some instances he has been
9 reimbursed. In the particular trip that he is here on now
10 he has not been reimbursed.

11 It has never been necessary even for the
12 Government to issue a subpoena to Mr. Barry to come.
13 Mr. Barry is a businessman from Toronto. Among his ventures
14 is a discotheque known as John Duck's Tavern, which is
15 located in Toronto, 2063 Lake Shore Boulevard West,
16 Toronto, Ontario.

17 In connection with that tavern, Mr. Barry
18 holds in his own name a liquor license issued by the
19 Province of Ontario. The fact that he was arrested on
20 Friday is something he will have to disclose to the
21 authorities when he seeks to renew his license.

22 THE COURT: I am not fully apprised of the
23 facts about the arrest.

24 MR. GREENBERG: I will come to all that, your
25 Honor, if you will permit me.

1 elmch

2 THE COURT: Okay.

3 MR. GREENBERG: When he travels back and forth
4 between the United States and Canada and he comes to the
5 United States Immigration, he is required to make truthful
6 answers to questions, and among the questions always
7 asked of him, and which he has always, up to now, been
8 able to answer in the negative, is "Have you been arrested?"

9 Last week Mr. Barry came down and was here
10 on Tuesday and Wednesday and was in the office of the
11 United States Attorney during both those complete days.
12 And up to that point there has never been any question of
13 reluctance or recalcitrance to answer questions and attempt
14 to refresh his recollection.

15 As a matter of fact, on Wednesday he was in
16 the U. S. Attorney's office from about 9:00 in the morning
17 until after 9:00 at night, a period of more than twelve
18 hours. He was ill with a virus. He couldn't remember
19 certain things.

20 He was pressed to remember. Since this appears
21 to be foremost in Mr. Schatz' mind, because he mentioned
22 it to me personally three times, I will say now and get
23 it over with that Mr. Barry has not been asked to give
24 any untruthful answers or to say anything which did not
25 accord with his recollection. He has not been asked to

1 elmh

2 Parenthetically, the defendant's bail in this
3 case is only \$20,000.

4 Mr. Barry on Friday attempted to go home to
5 Toronto. He also intended to communicate with the
6 United States Attorney after he was home and after he
7 recovered from his illness. Instead he was arrested at
8 LaGuardia field, and he explains to me the treatment
9 that he received at the hands of the police -- I assume
10 that they didn't know what the substance of the charge
11 against Mr. Barry was, but he was arrested and handcuffed
12 and searched, and they wanted to tear open his baggage,
13 but his bags were on the airplane and had already gone
14 off to Toronto. We don't know where they are at this
15 moment.

16 In any event, he was brought here to the
17 courthouse, and friends of his retained me. We managed
18 to get his bail conditions ameliorated on Friday so
19 that he would not have to be committed to the criminal
20 jail, there being no civil facility for a civil prisoner.

21 He was released on Friday afternoon at about
22 half-past 6:00 on a personal recognizance bond in the amount
23 of \$100,000 secured by \$5,000 cash. We actually had the
24 cash in the courtroom. The magistrate refused to accept
25 it, so his friends rushed over to the only bank open in the

1 elach

2 have accepted those conditions.

3 MR. GREENBERG: I accepted it, your Honor,
4 because I had no choice.

5 THE COURT: Was this before a magistrate on
6 Friday?

7 MR. GREENBERG: Yes. This agreement had to
8 be reached even before we went to the magistrate.

9 THE COURT: Who did you go to?

10 MR. GREENBERG: Bernikow, your Honor.

11 THE COURT: Go ahead.

12 MR. GREENBERG: In addition to which he
13 is required to report whenever the United States Attorney
14 wants him to. He's got to either telephone daily from
15 New York or report to their office, and they want him
16 there for further preparation on at least six occasions.

17 I have a copy of the bond, your Honor, and I
18 would like the Court to look at it, the bond and the con-
19 ditions and the photocopy of the check.

20 We agreed to these conditions because we had
21 no choice; otherwise he would have been committed.

22 (Pause)

23 THE COURT: Let's hear from the Government.

24 MR. GREENBERG: May I finish, your Honor?

25 He, Barry has had to stay in a hotel in

1 elach

2 one who is looking for justice and retribution for the
3 loss he suffered at the hands of this defendant, Miss
4 Lamont. And knowing what he would get himself into,
5 three years ago he never would have started it in the first
6 place.

7 THE COURT: Let me be clear on your application.
8 What precisely are you applying for?

9 MR. GREENBERG: I am applying, number one,
10 to discharge the bond in its present form. In any event,
11 it has to be rewritten, I have been advised by Mr. Gray,
12 the post office inspector; the magistrate's office
13 says the bond has to be rewritten.

14 I'd like the \$5,000 which he borrowed from
15 friends in New York released and let us put up a personal
16 recognizance bond. He knows now what will happen if he
17 fails to return when required to be a witness at the
18 trial. That should be enough security to insure his coming
19 back. Because if he doesn't come back, your Honor, he
20 will never again get into the United States to transact
21 business in this country, and it's not worth it to him
22 to lose the privilege of entering the United States.

23 Parenthetically, he is going to have a lot of
24 trouble with Immigration concerning the circumstances of
25 his arrest on Friday, but we will cross that bridge when

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2 MR. SORKIN: On September 8, your Honor,
3 Mr. Green indicated he was here from early in the
4 morning until late at night. This is not accurate.
5 He arrived at approximately 6:00 p.m. -- 8:00 or 9:00 a.m. --

6 THE COURT: Were you there?

7 MR. SORKIN: No, your Honor.

8 THE COURT: Why don't you let the person speak
9 who was there, who knows the facts?

10 MR. SORKIN: I'd be happy to, but Mr. Greenberg
11 has prior to this hearing made certain allegations against
12 Mr. Schatz, namely, that there is prosecutorial misconduct
13 on Mr. Schatz' part. They have not done it by papers.

14 If you will give me just a moment, I think I
15 can --

16 THE COURT: You don't seem to know the facts.
17 You have to turn to Mr. Schatz to find out the right time
18 this happened.

19 Would you go ahead, Mr. Schatz, and tell us
20 what happened?

21 MR. SCHATZ: Your Honor, on the 8th Mr. Barry
22 arrived at approximately 10:00 a.m. I believe Mr. Greenberg
23 indicated that he left roughly at 9:00 p.m. It is my
24 recollection it was closer to 6:30, perhaps 7:00.

25 To be fair to Mr. Barry, he indicated on the

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2 7th and the 8th that he did not feel well.

3 On the 9th, we had another appointment and
4 Mr. Barry appeared sometime in the morning, sometime
5 between 10:00 and 11:00 -- I don't recall when.
6 I saw him outside the elevators, and I said I would be
7 with him in about ten or fifteen minutes. Approximately
8 at that time --

9 THE COURT: Had you asked him to come back
10 Thursday?

11 MR. SCHATZ: That's correct.

12 THE COURT: And he was back Thursday?

13 MR. SCHATZ: That's correct.

14 THE COURT: I just want to find out what
15 happened, Mr. Schatz. You continue the narrative.

16 MR. SCHATZ: Upon returning to my floor,
17 I could not locate Mr. Barry, and after awhile I began
18 both personally calling up his hotel room and having
19 a postal inspector calling up his hotel room. We left
20 numerous messages, and I called his hotel room through
21 11:00 p.m. on the 10th.

22 On Friday morning, the 11th, I called up his
23 hotel room and first was apprised that he was still in
24 it and left a message for him to call me. I then
25 instructed a postal inspector to see if he could contact

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2 Mr. Barry. The postal inspector apprised me that he could
3 not contact Mr. Barry.

4 At about sometime between 10:30 and 10:40 a.m.
5 on Friday, the postal inspector called me up and apprised
6 me that --

7 THE COURT: What time was this?

8 MR. SCHATZ: Sometime between 10:30 and
9 10:40 a.m. Friday, the postal inspector apprised me that
10 Mr. Barry had a 10:50 flight to leave the country and
11 go to Toronto.

12 At that point I had discussed the matter with
13 the head of the Criminal Division, and I spoke to him
14 again, and we agreed that the appropriate course of action
15 would be to seek a warrant for Mr. Barry's arrest as a
16 material witness.

17 At approximately 10:45, sometime between five
18 and ten minutes after I first received word that Mr. Barry
19 was on this flight leaving the country, I went before
20 the Part I judge, in your Honor's absence.

21 I set forth the basic framework as I have
22 stated it here today, with the clarification that I
23 indicated that it was my understanding that in two or three
24 minutes the plan was to leave LaGuardia.

25 Judge Haight asked me if I --

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2 THE COURT: Your information was that there was
3 a 10:50 flight, and when did you go before Judge Haight?

4 MR. SCHATZ: Sometime between 10:45 and 10:48.

5 Judge Haight asked me which of these facts
6 I had personal knowledge of, and I said I could only refer
7 to those matters in which I directly dealt with Mr. Barry,
8 but that the other information I had received was based
9 on information and belief upon my conversations with the
10 postal inspector.

11 Accordingly, Judge Haight ordered a bench
12 warrant for Mr. Barry's arrest.

13 I called from the robing room up to the
14 United States Attorney's Office, where I spoke to another
15 Assistant United States Attorney who apparently was in
16 contact with an agent, and ultimately the appropriate
17 authorities at the airport were apprised that a warrant
18 had been issued, and, as I understand it, Mr. Barry was
19 arrested.

20 In the meantime bail had been set initially
21 at \$100,000.

22 THE COURT: How did you get bail set at
23 \$100,000? When did you get bail set?

24 MR. SCHATZ: Bail was set in the morning of --
25 I will get to that, your Honor.

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2 I indicated initially before Judge Haight
3 that I would make the application orally and that I would
4 follow the matter with written papers, because I knew
5 Judge Haigh was leaving for the judicial conference.
6 I first typed up the warrant which I had typed up. I
7 requested at least initially that bail be set on the
8 warrant at \$100,000 cash or surety.

9 THE COURT: Does the warrant provide for bail?

10 MR. SCHATZ: I think it's set forth upon
11 appropriate conditions.

12 THE COURT: In my copy of the Criminal Code
13 I have got a Form 22 warrant for arrest of witness, and
14 it's simply a warrant for arrest. It doesn't say anything
15 about bail conditions.

16 MR. SORKIN: Your Honor, bail can be set by
17 the magistrate or judge at the time the warrant is issued,
18 assuming that the defendant may be arrested.

19 MR. GREENBERG: He is not a defendant; he is
20 a witness. I have had that five or six times, your
21 Honor. They keep referring to --

22 THE COURT: Please.

23 MR. SORKIN: A defendant or witness may be
24 arrested in another district so that when the defendant
25 or witness is arraigned in that other district bail is

1 elmer

2 MR. SCHATZ: No, your Honor.

3 THE COURT: Was this all transcribed?

4 MR. SCHATZ: It's on the record.

5 THE COURT: Judge Haight set \$100,000?

6 MR. SCHATZ: Cash or surety.

7 Mr. Barry was then arrested on the plane, as
8 I understand it, brought to my office. I told Mr. Barry
9 that he might wish to get an attorney.

10 The next thing that happened was that I
11 conferred with Mr. Greenberg --

12 THE COURT: When was Mr. Barry brought to your
13 office?

14 MR. SCHATZ: I assume -- I would guess about
15 1:00 o'clock or thereabouts. I'm not certain.

16 MR. GREENBERG: That's right. I came at 1:30.

17 THE COURT: The plane was 10:50 and you got
18 the warrant and the arrest occurred about 10:50.

19 At 11:50 or so you got the bail set and Mr.
20 Barry was brought to your office when?

21 MR. SCHATZ: Sometime between 12:00 and 1:00,
22 but that is only an estimate.

23 THE COURT: And then Mr. Greenberg came to your
24 office about when?

25 MR. SCHATZ: Then I met Mr. Greenberg outside

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2 has submitted before your Honor.

3 THE COURT: Did you ask Mr. Barry or Mr. Greenberg
4 what the problem was?

5 MR. SCHATZ: Yes, your Honor.

6 THE COURT: What did they tell you?

7 MR. SCHATZ: Mr. Greenberg said that Mr. Barry was
8 not feeling well and he felt pressured and he wanted to
9 leave.

10 MR. GREENBERG: I also said he'd come back
11 and that this wasn't necessary, that you were destroying
12 yourself, you were making a hostile witness out of a
13 cooperative witness. I said I never saw anything more
14 precipitous in my life. I said all this to Mr. Schatz.

15 MR. SORKIN: The bottom line of all of this
16 is that without Mr. Barry there will be no trial.

17 Mr. Greenberg is perfectly correct in saying
18 Mr. Barry is the key witness. The trial was set sometime
19 ago by your Honor and is set for months. It is due to
20 go next week, and if Mr. Barry is not here the Government
21 is going to have to make an application which I think we'd
22 be justified in doing under the local rules, to ask for
23 an adjournment sine die until we can get Mr. Barry back.

24 There is no prejudice to Mr. Barry now. He
25 is not incarcerated. The trial is but eight days away --

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2 THE COURT: No prejudice in what way? I thought
3 he had to stay here.

4 MR. GREENBERG: Yes. Look at the second page,
5 your Honor.

6 THE COURT: Isn't he supposed to stay in
7 New York?

8 MR. SORKIN: Your Honor, he is supposed to
9 stay in New York.

10 THE COURT: Isn't that prejudice?

11 MR. SORKIN: It is prejudice only to the extent
12 that we are trying to assure Mr. Barry's appearance.

13 THE COURT: The issue is the fact that he is
14 a resident of Toronto and he is now, according to the
15 conditions of this bond, required to stay in New York
16 as far as I understand it. And that raises the issue
17 as to whether he should be required to stay in New York
18 until the trial, or whether he should be released so he
19 can go back to his home and business in Toronto.

20 Does the Government take the position that he
21 should be required to continue to stay in New York pending
22 the trial?

23 I know we are gathering tomorrow to discuss
24 a possible application for adjournment of the trial. I
25 don't know what will come of that. But the trial now, I

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2 think, is set for the 23rd.

3 Even if there is no adjournment granted to the
4 defense, it may not come about until the 28th, so we have
5 a fair amount of time.

6 MR. SORKIN: Your Honor, given the nature of
7 Mr. Barry's departure, the fact that he did not give
8 any notice to the Government that he was leaving, the
9 fact that if he is alleged to be a cooperating witness,
10 under all these circumstances, notice should have been
11 given, the fact that he didn't appear, the fact that he
12 did not return phone calls, the fact that if he does not
13 appear this is going to cause a substantial injustice
14 both to the Government and the defendant and to the Court
15 and to the defense attorney --

16 THE COURT: I spoke of the 28th.

17 I have now scheduled a three-judge court trial
18 for the 27th for two days. If I can't start on the 23rd
19 the trial will not start until the 29th. It is now the
20 13th. So we are talking about having Mr. Barry lay over
21 until the 23rd or possibly the 29th.

22 Before we get into trying to assess the dangers
23 of your not coming, what was the problem about the situation
24 last Thursday and Friday? Why didn't you return calls?
25 Why didn't you let them know your plans?

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2 MR. BARRY: Your Honor, may I tell you what
3 happened? He scheduled to interview witnesses on certain
4 days. My appointments were Tuesday and Wednesday, which I
5 kept. He is wrong when he says on Tuesday night I was
6 let go out of there at 6:00 o'clock. It was after 8:00
7 o'clock.

8 THE COURT: I think he was talking about
9 Wednesday.

10 MR. BARRY: Wednesday night, yes.

11 THE COURT: Wednesday you were there?

12 MR. BARRY: Tuesday and Wednesday I was there.

13 THE COURT: Was he there Tuesday and
14 Wednesday?

15 MR. SCHATZ: Yes, your Honor. On Tuesday
16 he was scheduled to arrive at 11:00 and he in fact showed
17 up at 3:00.

18 THE COURT: How long was he there Tuesday?

19 MR. SCHATZ: My recollection is approximately
20 3 to 3-1/2 hours, but I could be mistaken.

21 THE COURT: He came back on Wednesday?

22 MR. SCHATZ: That is correct. Sometime in
23 the morning.

24 THE COURT: And he left early evening at some
25 point?

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2 MR. BARRY: Yes, sir.

3 THE COURT: Was there any indication to you
4 that you had messages?

5 MR. BARRY: No, sir.

6 THE COURT: And you spent the night there?

7 MR. BARRY: Yes, sir.

8 THE COURT: What time did you wake up?

9 MR. BARRY: About 7:00 o'clock in the morning.

10 THE COURT: Then what did you do?

11 MR. BARRY: Packed up my clothes and I went
12 downstairs for breakfast, and I checked out of the hotel
13 and went to the airport.

14 THE COURT: At any time were you told you had
15 messages?

16 MR. BARRY: No, sir.

17 You have to go to the desk and ask for them.

18 MR. SORKIN: Your Honor, am I to understand
19 that the phone doesn't ring in the room?

20 MR. BARRY: Certainly it rings. I didn't
21 say it didn't.

22 THE COURT: Did the phone ever ring in the
23 room and you failed or refused to answer it?

24 MR. BARRY: Yes, sir.

25 THE COURT: Tell us about that.

1 clerk

2 Dr. Campbell had a check that he received
3 from a business transaction of \$10,000. It was a bank
4 check made to his order. Because of the requirements
5 of the U. S. District Court Clerk's Office, they would
6 not accept an endorsed-over check. So he had to run
7 to the bank here and cash the check and bring cash and
8 he brought the cash, and the magistrate didn't want cash,
9 so he went back to the bank and got a bank check for
10 \$5,000.

11 Mr. Barry is going to have to go back to
12 Canada, get money to reimburse Dr. Campbell.

13 I submit the following:

14 If he doesn't want to come back, they will
15 never get him back, but I have said it here on the record
16 and I have said it to Mr. Barry, and I am willing to
17 agree that some form of restraint be imposed on him, and
18 that restraint be that he would sign a new personal
19 recognizance bond, and the amount doesn't matter, and I
20 suggest \$5,000. He has no assets in the United States
21 from which to collect it, but if he doesn't come back and
22 he, in effect, commits the offense of bail-jumping, which
23 the statute provides for, he subjects himself to a one-year
24 imprisonment term and a \$5,000 fine.

25 But worse than that for this man is that he

1 elach
2 because they may get convicted of a crime and get sentenced
3 to prison.

4 As I understand it, this man is coming to
5 testify in a case about which he has complained.

6 MR. GREENBERG: He's been victimized.

7 THE COURT: There is a very unfortunate
8 misunderstanding. It's too bad he didn't answer the
9 phone. But that is one of those things.

10 We are sitting around sweating about bail
11 conditions. I don't know why he wouldn't come back.

12 MR. GREENBERG: Your Honor, he's been victimized
13 \$65,000. He wants to recover that money from the defendant.

14 THE COURT: Nothing has been told to me to
15 cover any conceivable motive for him to refuse to come
16 back. There is no indication that somebody got to him
17 while he was in New York. He came down beyond what you
18 actually called for.

19 I frankly say this is preposterous. I don't
20 think it was preposterous to request the arrest warrant.
21 I think under the circumstances when he wasn't answering
22 the phone or those messages, I think Mr. Schatz acted
23 prudently. And I think Mr. Barry let himself in for the
24 inconvenience. But let's get past that.

I am not shown any reason to compel

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2 MR. GREENBERG: We can agree on the time.

3 There is no problem. I will have him here, Judge.

4 THE COURT: I am going to grant the motion to
5 amend the bail conditions. He is permitted to return
6 to his residence in Toronto and the amount of bail is
7 set at \$5,000 personal recognizance bond unsecured.

8 MR. GREENBERG: Thank you, your Honor.

9 THE COURT: And the \$5,000 deposit previously
10 made will be refunded immediately, and I think that
11 disposes of the formal motion. Is that correct?

12 MR. GREENBERG: Yes, your Honor.

13 THE COURT: A further condition, and I will
14 make it a formal condition of the bail, is that Mr. Barry
15 is to appear at the United States Attorney's Office at
16 times to be agreed upon on the 16th and 17th and 20th and
17 21st of this month, unless those dates are changed by
18 agreement with the United States Attorney's Office.

19 And departing from the formalities, I just
20 want to say to Mr. Barry that I think that -- I will assume
21 that there is nothing more here than a misunderstanding,
22 but I think that we will get back on the track. It is
23 a very serious case.

24 You take it seriously, the Government takes
25 it seriously, and for the sake of all concerned, your

U.S. COURT OF APPEALS:2nd CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

- against -

ANNE LAMONT,

Defendant-Appellant.

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, Robert L. Martinez, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 234 East 33rd Street; New York, New York; 10016
That on the 8th day of April 1977, deponent served the annexed *appendix*

upon Robert Fiske

attorney(s) for

U.S.

in this action, at 1 St. Andrews Pl. New York, New York

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 8th
day of April 19 77

Robert T. Brin

Robert L. Martinez
Robert L. Martinez

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977